

1 THE SECRETARY'S COMMISSION ON OPPORTUNITY IN ATHLETICS

2

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4

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7 MR. TED LELAND: I want to welcome

8 everyone this morning. And I think all of us are

9 looking for a productive morning.

10 Our plans for today, to review them, is we
11 have invited speakers to take up the first and second
12 session, 9:00 to 10:00 and 10:00 to 11:00. At 11:00 we
13 will take a break and come back at 11:15,
14 approximately, and begin our open forum.

15 I would remind anyone who would like to
16 speak during the open forum that they should go to the
17 registration desk outside and sign up so that we can
18 have a list at 11:00 of those people that would like to
19 speak.

20 So our first speaker this morning is Crista
21 Leahy.

22 Crista, if you could come up and sit here,
23 please. She's a graduate of the University of Chicago
24 Law School. She's currently serving as a law clerk for
25 the Honorable Frank H. Easterbrook at the United States

1 Court of Appeals for the Seventh District in Chicago.
2 She has an undergraduate degree from Princeton, where
3 she was also a member of the NCAA Division 1 women's
4 championship team in LaCrosse.

5 She's been a Research Assistant for a number
6 of Law Professors at the University of Chicago. She's
7 also worked at the New York City Office of the Mayor as
8 a Special Assistant to the Criminal Justice Coordinator
9 and for the New York City District Attorney.

10 Crista is the author of the 1998
11 publication, quote, Taking a Shot at the Title: A
12 Critical Review of the Regulation and Enforcement of
13 Title IX in Intercollegiate Athletics.

14 We've asked Crista to make a presentation
15 for approximately 30 minutes and then be available for
16 questions. And then at approximately 10:00 or as close
17 to 10:00 as we can manage we will introduce our next
18 panel of three speakers.

19 So, Crista, thank you for coming.

20 MS. CRISTA LEAHY: Thank you very much.
21 I just wanted to thank the Commission for inviting me
22 here today. It's a pleasure.

23 Before I get started, just one disclaimer.
24 I am currently working for the Seventh Circuit Court of
25 Appeals and for the Honorable Frank H. Easterbrook, and

1 of course everything I say here is my own personal
2 opinion and has no relationship to either the Seventh
3 Circuit or to Judge Easterbrook. Before I get started,
4 I just want to give a little background on how I
5 started to study Title IX, how I got focused on the
6 issue.

7 I was an athlete in high school and in
8 college. In my sophomore year in college I had never
9 heard of Title IX, didn't know it existed, and I spent
10 a month volunteering at the Women's Sports Foundation,
11 and low and behold, I found out that Title IX existed.
12 And I thought about it and I thought that I had some
13 perspective to offer being an athlete and didn't think
14 that there was a ton out there being said and was also
15 forced to spend a year writing a paper on one specific
16 topic and thought, well, Title IX is interesting, I
17 have to spend a year doing something, and so I spent a
18 year doing a lot of research, mostly background
19 research, and it's the background research that I'm
20 going to focus on today.

21 I wrote it, handed it in, which is all I
22 really cared about, graduated, and then some people
23 came to me and thought it was a good background piece,
24 and so I ended up publishing it in the Journal of
25 College and University Law in '98. So that's how I

1 came here today and that's how I learned about Title
2 IX.

3 I'm going to try and sort of walk everybody
4 through a timeline, and it basically covers 1971, which
5 was the year before Title IX, and it goes up to the
6 early '90s, a little bit about the case of Cohen Versus
7 Brown, which I'm sure you're all familiar with and
8 probably heard it from the General Counsel yesterday in
9 more detail.

10 Beginning in 1971, as you all know, Title IX
11 was passed in 1972, so in 1971 the regulation of
12 intercollegiate athletics is basically accomplished
13 through the NCAA for men and for the Association for
14 Intercollegiate Athletics for women. There was not
15 much government involvement at all at the time.

16 And the participation numbers in 1971 are
17 appalling, more than 170,000 men participating in
18 intercollegiate athletics and fewer than 32,000 women.
19 So that's when the government comes in, and it's 1972
20 they come in, and we get Title IX and the education
21 amendments of 1972. And the text, which I think
22 sometimes gets overlooked, the text of the actual
23 statute says, and I think it's important, no person in
24 the United States shall on the basis of sex be excluded
25 from participation in, be denied benefits of, be

1 subjected to discrimination under any education program
2 or activity receiving federal financial assistance.

3 So we have this sort of generally worded
4 statute that comes out, and no one really knows what
5 all this means. It's not entirely clear that it
6 applies to intercollegiate athletics right away, and so
7 there's an enormous lobbying effort back and forth
8 about what are we going to do? And the NCAA at the
9 time was lobbying hard to have intercollegiate
10 athletics exempt from Title IX.

11 And there's a 1974 Washington Post article
12 that quotes Walter Byers, who was then the Executive
13 Director of the NCAA, calling Title IX the, quote,
14 possible doom of intercollegiate athletics, end quote.

15 So there's a lot of contention, there's
16 bickering, there's lobbying at Congress, and all of a
17 sudden it becomes clear intercollegiate athletics fall
18 under the umbrella of Title IX.

19 So then we have a shift in tactics. We're
20 going to have to live with this. What can we do to
21 make the most liveable situation?

22 So again we have this lobbying effort mostly
23 on behalf of the NCAA for what's called the Tower
24 Amendment, and the Tower Amendment would have exempted
25 revenue producing sports from the jurisdiction of Title

1 IX, and it failed. And instead of the Tower Amendment,
2 we got the Javits Amendment, and the Javits Amendment
3 is actually important.

4 The Javits Amendment was passed by Congress,
5 and it directed the Secretary of the Department of
6 Health, Education and Welfare at that time to prepare
7 and publish regulations implementing Title IX, quote,
8 including, with respect to intercollegiate athletic
9 activities, reasonable provisions considering the
10 nature of particular sports.

11 So this was Congress saying to HEW, which
12 happens all the time, go forth and figure out how we're
13 going to really take this general statute and apply it
14 to intercollegiate athletics, and be sensitive to the
15 needs of intercollegiate athletics, and HEW responds
16 and it does that.

17 And in 1975, July of 1975, they adopt the
18 first set of regulations. And there's a lot of talk
19 about regulations and policy interpretations, and
20 there's a different timeline, and I'm specifically
21 going to refer to the 1975 regulations as the
22 regulations as opposed to the 1979 policy
23 interpretation.

24 So the regulations were enacted pursuant
25 specifically to the Javits Amendment passed by

1 Congress, and the regulations made the first of a
2 series of what I would call big moves in Title IX, and
3 that is it mandates equal opportunity. So they take a
4 general statute that says no discrimination and they
5 say, in the context of intercollegiate athletics, that
6 means equal opportunity.

7 And so the language of the regulation says,
8 a recipient of federal financial assistance which
9 operates or sponsors intercollegiate athletics shall
10 provide equal athletic opportunities for both sexes.

11 And the criteria for evaluating whether
12 schools provide equal athletic opportunity chiefly
13 among them is whether the selection of sports and
14 levels of competition effectively accommodates the
15 interest and abilities of members of both sexes.

16 And we see the interest and abilities
17 language again in the policy interpretation, but this
18 is the first time that we see it in the regulations.

19 There's not a whole lot in the regulations
20 that tells us what this means or how we're going to
21 measure it, but it's the first time we see this
22 interest and abilities language.

23 Incidentally, as a side note, right around
24 the time of the regulations the NCAA comes and makes a
25 bit of a play for control of women's athletics, and

1 eventually they do succeed. So as a side note in the
2 background now, the NCAA runs the championships and
3 regulations of both men's and women's athletics, so
4 they're all under the same umbrella, and eventually the
5 AIW is forced to dissipate.

6 So we have the regulations in '75. And then
7 by the end of July of 1978 HEW is bombarded with
8 complaints about athletic departments, and they receive
9 nearly a hundred complaints against 50 institutions
10 alleging violations of Title IX.

11 And the problem resolving the complaints is
12 that few of the athletic departments actually directly
13 receive federal financial assistance. So we run into
14 the next problem, which is how do you define a program
15 or activity that receives federal financial assistance?

16 Virtually every college and university in
17 the country receives some form of federal financial
18 assistance, even if it's the most minimal, that their
19 students might receive Pell grants or federal loans,
20 but not as many colleges and universities receive
21 direct federal financial assistance into their athletic
22 department.

23 So OCR was trying to figure out, well, how
24 do we determine this, and can we force Title IX in
25 these particular schools where there's no direct

1 assistance? And they realized that the regulations are
2 incomplete, so they take it upon themselves in December
3 of 1978 to issue a policy interpretation, which is
4 essentially a reinterpretation of the earlier-issued
5 regulations. And it's the policy interpretation that
6 most of us talk about and it's where we get our
7 three-prong test, and it's a source of where a lot of
8 the tension comes from.

9 A policy interpretation was issued pursuant
10 to a formal notice and comment procedure. So they
11 issued a preliminary proposal of the policy
12 interpretation, they received over 700 comments from
13 the public, they visited eight universities, and on
14 December 11, 1979, they issued the final policy
15 interpretation.

16 The stated purpose of the policy
17 interpretation was to, quote, provide a framework
18 within which the complaints can be resolved and to
19 provide institutions of higher education with
20 additional guidance on the requirements for compliance
21 with Title IX in intercollegiate athletic programs.

22 And when they issued it, they realized that
23 they had to take an integrated institution approach.
24 And what I mean by that is if you get a little bit of
25 federal financial assistance into your institution, we

1 don't care how you get it, that means you're within the
2 jurisdiction of Title IX. And that is opposed to a
3 program-specific approach, which says only the program
4 that directly receives the money is within the
5 jurisdiction of Title IX.

6 So they specifically take the integrated
7 institution approach. And the language that they use
8 is that the policy interpretation applies to any public
9 or private institution, person or other entity that
10 operates an educational program or activity which
11 receives or benefits from financial assistance
12 authorized or extended under a law administered by the
13 department. This includes educational institutions
14 whose students participate in HEW funded or guaranteed
15 student loan assistance programs. So this means that
16 basically every college or university is within the
17 jurisdiction of Title IX.

18 And the framework of the policy
19 interpretation highlighted three basic considerations:
20 participation, financial assistance, and then a kind of
21 catchall category of equipment and locker rooms and
22 publicity. And the contention generally is over the
23 participation, as we all know. And it outlined this
24 three-prong test, and number one is whether
25 intercollegiate athletic opportunities for men and

1 women, quote, are provided in numbers substantially
2 proportionate to their respective enrollments.

3 Number two is whether universities can
4 demonstrate a history of continuing practice of growing
5 expansion which is demonstrably responsive to the
6 developing interest and abilities of the
7 underrepresented sex.

8 And finally, mirroring the language of the
9 1975 regulation that says whether it can be
10 demonstrated that the interest and abilities of the
11 members of the underrepresented sex have been fully and
12 effectively accommodated by the present program. So
13 that leaves out basically the source of all contention
14 and also how we measure participation.

15 As a side note, I think it becomes important
16 in the debate about substantial proportionality and
17 what that means, what the relevant comparison is. For
18 financial assistance, the policy interpretation
19 requires that the female share of financial assistance
20 be proportionate to the female rate of participation.
21 So it used a different benchmark or different point of
22 comparison for the financial assistance versus the
23 participation. And financial assistance was defined to
24 include athletic financial aid in the form of
25 scholarships and grant and aids as well as loans and

1 any work-related work study programs that are
2 specifically available to athletes.

3 It had nine other considerations, that third
4 catchall category had nine other considerations, and
5 the policy interpretation gives a number of examples of
6 how that might work; different university situations
7 and what universities can do to comply in those nine
8 situations. To the best of my knowledge, no one has
9 raised any serious concerns about that area of Title
10 IX.

11 So that brings us up to 1979, and except for
12 the fact that Congress passed Title IX, that's
13 everything that the Executive Branch has done to
14 enforce Title IX. It gives us the regulations.

15 In 1979 we start to see a slew of judicial
16 decisions that have an enormous impact on Title IX
17 today. The first and probably the most important is a
18 1979 Supreme Court decision called Cannon Versus the
19 University of Chicago, and in that decision the Supreme
20 Court found that Title IX has an implied private right
21 of action. And that is key because that means that a
22 female athlete or any athlete can directly go to court
23 and say, this university violated Title IX, I want
24 relief, instead of having to go to the Department of
25 Education and having to go through the administrative

1 process. So it's the beginning of when we start to see
2 an explosion of Title IX litigation.

3 The other thing that it does is it now puts
4 the burden on the courts instead of the Department of
5 Education to figure out what the policy interpretation
6 means. So we see another venue for trying to figure
7 out what does this language mean, what does
8 participation mean, how do we measure opportunity?

9 Then there's a series of cases that focus on
10 this program-specific versus integrated institution
11 approach. The first was North Haven Board of Education
12 against Bell. It was 1982. It was a case involving
13 Title IX regulations with regard to employment
14 opportunities. And the Court gave an extremely narrow
15 view of the statutory language.

16 Justice Blackmun defined program or activity
17 receiving federal financial assistance as the smallest
18 identifiable unit within an institution responsible for
19 the alleged discrimination. It was a big setback. It
20 basically it means the Supreme Court now has adopted
21 the program-specific view as opposed to the integrated
22 institution approach adopted in the policy
23 interpretation.

24 There was another case in the same year,
25 Hillsdale College versus HEW in the Sixth Circuit, the

1 same thing, very program-specific. The term program
2 was used in the Congressional debates preceding the
3 passage of Title IX to refer not to the total program
4 of an educational institution, but to the smaller scale
5 activities within that institution.

6 And then in 1984 the really big case, Grove
7 City College Versus Bell. And the issue there was
8 whether Grove City had to issue the assurance of
9 compliance with Title IX. There was no direct aid to
10 athletes at Grove City.

11 And the HEW took an integrated institution
12 approach and said, you still have to issue the
13 assurance of compliance. And the Court said no. And
14 the quote was, the assumption that Title IX applies to
15 programs receiving a larger share of a school's own
16 limited resources as a result of federal assistance
17 earmarked for use elsewhere within that institution is
18 inconsistent with the program-specific nature of the
19 statute.

20 So this is huge, and it winds up in a number
21 of cases being dismissed, because now we're back to
22 we're worse than pre 1979 because it's not that we
23 don't know what the law is anymore, we're trying to
24 figure it out. We know what it is, and it's that most
25 athletic departments in the country are not subject to

1 Title IX. And, as you can imagine, there's an enormous
2 fall-out.

3 The Department of Education was forced to
4 drop 23 cases that it was handling at the time. It
5 started, I think, the really polarized debate that we
6 tend to see today.

7 Incidentally, the litigation that was going
8 on, the athletes, primarily female plaintiffs, were
9 forced to sort of raise Constitutional objections to
10 their lack of opportunity, and those pretty much failed
11 across the board.

12 The equal protection clause had never been
13 applied at that time to intercollegiate athletics, and
14 so basically athletes were either withdrawing their
15 cases or pursuing other legal alternatives.

16 Congress had hearings in 1986 after two
17 years of this fall-out to figure out what to do about
18 Grove City and what to do about Title IX, and at the
19 hearings, there are transcripts of the hearings, an
20 enormous debate, again, a passionate debate for both
21 sides, people talking about Grove City basically as the
22 demise of Title IX and that something must be done or
23 otherwise we just eliminate the effect of the statute
24 completely.

25 So Congress acted, and in 1987 we got the

1 Civil Rights Restoration Act. And as a side note,
2 President Reagan actually vetoed the Act and it was
3 passed by a two-thirds override. The Civil Rights
4 Restoration Act broadly defined program and activity.
5 It basically established the authority for applying the
6 provisions of Title IX to athletics, and it removed the
7 effect of Grove City. It basically was a legislative
8 override of the decision of Grove City.

9 Congress was clear that what it was trying
10 to do was overturn Grove City. And it said, certain
11 aspects of recent decisions and opinions of the Supreme
12 Court have unduly narrowed or cast doubt upon the broad
13 application of Title IX, and legislative action is
14 necessary to restore the prior consistent and
15 long-standing Executive Branch interpretation and broad
16 institution-wide application of those laws as
17 previously administered.

18 So now, without any question, we're back to
19 an integrated institution approach, and we sort of
20 breathe new life into Title IX. And this is why I
21 think in the late '80s and early '90s you start to see
22 an explosion. Things are much clearer now, not clear
23 in terms of how to measure participation and
24 opportunity, but clear in terms of when I walk into
25 court, I know that the Court has jurisdiction, I know

1 who the defendant is, and I can define the scope and
2 the applicable laws. So the landscape is much clearer
3 at this point after 1987.

4 As a side note, one other important case
5 that happened was 1982. It was Franklin against
6 Gwinnett County Public Schools, and it allowed for a
7 plaintiff to recover damages in a Title IX suit if the
8 plaintiff could demonstrate intentional discrimination,
9 which in the Title IX arena regarding athletics is
10 generally the case that it's intentional.

11 So that is the landscape in terms of the Act
12 itself, the different interpretations that we get, the
13 distinction between the 1975 regulations and the 1979
14 policy institution, how those two things played out in
15 the courts and how we got to the early '90s where we
16 start to see more litigation and more press about the
17 effects of Title IX and more universities trying to
18 come into compliance with Title IX.

19 The only case I really want to mention is
20 Cohen versus Brown just because I think there was one
21 more important shift in that case. I talked about the
22 sort of important moves going on, the move in the first
23 regulation from nondiscrimination to opportunity, the
24 move from the regulation to the policy interpretation
25 from opportunity to participation. And there was a big

1 move in Cohen versus Brown.

2 I'm sure most of you are familiar with the
3 facts of Cohen, it was sort of a saga. It took from
4 about 1992 until 1997, and there were sort of two
5 little trials. There was a preliminary injunction,
6 which was appealed to the First Circuit, and then there
7 was a trial on the merits, which was also appealed to
8 the First Circuit. So we have four different
9 decisions. And it started because Brown cut four teams
10 in 1991. They cut two men's teams and two womens'
11 teams and the women athletes from the gymnastics and
12 volleyball teams, which were the two teams that were
13 cut, sought an injunction against Brown to reinstate
14 their teams to full varsity status.

15 The teams weren't actually completely
16 eliminated, they were kind of demoted to club status.
17 They could participate interscholastically, but they
18 had to come up with their own money. And the District
19 Court granted the athletes a preliminary injunction and
20 granted it back at full varsity status.

21 It basically said Brown can't show
22 substantial proportionality. There was something close
23 to a 13 percent difference between their athletic ratio
24 and their undergraduate enrollment ratio. And while
25 Brown added lots of programs in the '70s and early

1 '80s, they hadn't added a women's team since 1982, and
2 this was 1981, and so the Judge said, you demonstrated
3 program expansion, but it hasn't continued, and said,
4 you can't be effectively accommodating the interest and
5 abilities of students because, look here, we have
6 plaintiffs that are interested in A ball and you don't
7 have a team for them.

8 The First Circuit affirmed that decision.
9 Brown made the argument that an institution
10 satisfactorily accommodates female athletes if it
11 allocates athletic opportunities to women in accordance
12 with the ratio of interested and able women to
13 interested and able men. And the Court said no and
14 said that that argument reads the "full" out of the
15 duty to accommodate fully and effectively.

16 So Brown loses and the teams are restored to
17 their full varsity status. But the case doesn't end.
18 A year later we get the trial on the merits. And this
19 is where I think we get another big move, and I just
20 call your attention to where this move is happening.
21 As opposed to the big moves that happened with the
22 regulations, which is the executive branch enforcing
23 Title IX, this is a big move that comes from a District
24 Court in Rhode Island, but it's a big move that has
25 ramifications across the board for Title IX.

1 So one might question whether this is the
2 right place from which this move should come. It might
3 be the right move, but should it come from somewhere
4 else?

5 The big move is Judge Pettine in the closing
6 arguments asked Brown and the plaintiffs to articulate
7 how they would define opportunity, because that's what
8 we were arguing about, equal opportunity, how do you
9 define opportunity? And Brown says, we define
10 opportunity based on the number of slots that we
11 provide for men and women to compete at the
12 intercollegiate athletic level. And at Brown there
13 were unused spots for some women's sports, so if a
14 roster could accommodate 43 players, maybe there were
15 only 40 players.

16 The Court rejected that and it said, no,
17 opportunity equals participation, and it means that
18 we're going to count opportunity based on the number of
19 women you actually put in a uniform or, you know, put
20 out on the field or on the court. It doesn't matter,
21 you can't start adding spots, you can't change your
22 roster from 40 to 45 and say we're offering more
23 opportunities, we're going to count it based on the
24 number of women that are out there playing. And that
25 is a big move.

1 In 1996 the First Circuit upheld basically
2 all of the District Court's holdings except for the
3 remedy. The District Court Judge made some efforts to
4 micromanage Brown's athletic department and the First
5 Circuit slapped them on the wrist.

6 So those are the big moves. That gets us to
7 the mid-'90s, and that sort of I think gets us to
8 pretty much where we are today. I'm not sure that that
9 much has changed from there. But those are the
10 legislative and sort of key judicial up to the mid-'90s
11 decisions that get us to the debate I think that all of
12 you are here trying to figure out what the proper
13 solution, if any, is.

14 So that's really all I have in terms of
15 history. I hope you found it helpful, and I would be
16 happy to answer any questions that you have to the best
17 of my ability.

18 DR. RITA SIMON: I'm confused, but it
19 doesn't take much to confuse me. I'm Rita Simon.

20 Yesterday there was a lot of discussion
21 about getting an independent measure of interest on the
22 part of male and female students, that it's not only
23 the proportionality.

24 Say you have 53 percent women and 47 percent
25 men. You don't need 53 percent slots for women until

1 you can get an independent measure of how interested
2 the men and women are.

3 Am I wrong in thinking that you in your
4 discussion didn't measure, didn't indicate that
5 interest was a factor in all of this?

6 MS. CRISTA LEAHY: That was my error
7 then. The third prong of the policy interpretation is
8 whether a university can demonstrate that it's fully
9 and effectively accommodating the interest and
10 abilities of the unrepresented sex. So it can satisfy
11 the requirements of Title IX by meeting that particular
12 prong.

13 Here's the problem that happens in the real
14 world. If you go to court, if you're a university and
15 you're sued, the plaintiffs on the other side of the
16 table are arguably female athletes who are interested
17 and able. So that prong has never ever, to the best of
18 my knowledge, been used to say we're satisfying Title
19 IX because it's always in a litigation posture that
20 these cases come about, and there's always people
21 sitting across the room who are interested and able.

22 I think the discussion yesterday probably
23 pertains to more globally how can we figure out
24 interest and ability, and substantial proportionality,
25 is the undergraduate student body the right point of

1 comparison? Are women as interested as men?

2 But in terms of the litigation posture, yes,
3 it's there. It's part of the policy interpretation,
4 but in the litigation context, it never succeeds.

5 DR. RITA SIMON: So in other words, we
6 haven't had a court case or an interpretation whereby a
7 university has said, yes, we have 53 percent women
8 undergraduates, but we've done some surveys and we've
9 looked at some other kinds of data that would show that
10 only 35 percent of these women are interested in
11 contrast to a much higher percentage of men who are
12 interested, and therefore we have developed our
13 programs on the basis of interest. No university has
14 made that argument?

15 MS. CRISTA LEAHY: Brown made that
16 argument and it failed. Basically, the Judge saying,
17 the people sitting at the other table are interested
18 and able and you're not accommodating them.

19 Basically it found that every population
20 that you would poll is not right. If you poll the
21 students at Brown; well, Brown has a lot of control
22 over the students that wind up at Brown, and we all
23 know that we can recruit, and so that's sort of a
24 self-selection process.

25 And the Court rejected as sort of

1 inplausible, you can't poll the entire country, so
2 there was no sort of statistical measure that Brown
3 could offer that would satisfy the Court in the face of
4 having a class of plaintiffs who were able and
5 interested.

6 DR. RITA SIMON: Thank you.

7 MR. GERRY REYNOLDS: Do you think that
8 if the Office of Civil Rights had blessed a survey,
9 that the Court would defer to the reasonable
10 interpretation that OCR would give the statute?

11 I'm just trying to change the fact pattern a
12 little bit. If Brown had been able to point to a
13 policy statement from the Office of Civil Rights where
14 the Office of Civil Rights had prepared a survey, had
15 blessed it, under those circumstances do you believe
16 the Court would have come out the other way?

17 MS. CRISTA LEAHY: Blessed a survey,
18 like a nationwide survey that said women are interested
19 in athletics, 43 percent of the seniors in high
20 schools?

21 MR. GERRY REYNOLDS: Well, it could be
22 done in a number of ways, and basically blessing a
23 methodology, saying that if you use this particular
24 methodology to measure the interests and abilities of
25 your students, then we will presume that it's an

1 accurate measure of the interests and abilities of your
2 students in terms of a bell curve, that it may not
3 catch all the students, but it catches, say, 95 percent
4 of the student bodies, it measures that amount.

5 MS. CRISTA LEAHY: Well, this gets into
6 a little administrative law. I think if OCR goes and
7 blesses a survey right now, the courts would certainly
8 give it a hard look. I don't know that they would have
9 to necessarily say in a particular litigation context
10 if a university offered that particular type of survey,
11 okay, you're fully and effectively accommodating the
12 interest and abilities because Congress didn't tell you
13 to go and come up with a survey. That's a nuance
14 distinction that isn't being held in the face of the
15 fact that Congress didn't tell OCR to go and issue the
16 policy interpretation, and yet everyone has sort of
17 conceded it's law almost, it has the effect of law.
18 Now you're going to act 15 years later.

19 I mean, I think conceptually it's a good
20 idea. It certainly would offer courts a lot of
21 guidance, but I don't know as a legal matter why a
22 court didn't want to believe the statistical evidence.
23 I don't think that they would have to, but I think it
24 would help.

25 MR. GERRY REYNOLDS: One more

1 follow-up. You also mentioned a slots versus actual
2 athletes. If you design a rule where you could ensure
3 that institutions weren't gaming the systems just by
4 adding slots to get their numbers right, do you think
5 that that would be an approach that would be reasonable
6 and acceptable?

7 MS. CRISTA LEAHY: I think buying into
8 the hypothetical of sort of ensuring somehow that
9 universities aren't gaming the system, it would
10 probably be reasonable.

11 I think one of the problems, and I have no
12 sort of sociological evidence to prove this, but just
13 being an athlete in college and having lots of athlete
14 friends, one of the problems with filling out rosters
15 is that it seems that men are more willing to be the
16 number 44 guy on the roster than women are, and so I
17 think it's harder to find -- it's easier to find
18 women's programs that don't fill those last five spots.
19 And so even if you somehow figure out that there's no
20 gamesmanship involved, I still think you're going to
21 find lots of unfilled spots for all these programs.
22 But that might not mean that -- I mean, whether you
23 count that as opportunity.

24 In my opinion, it seems reasonable --
25 assuming that you're not inflating these roster

1 numbers, it seems reasonable to count 32 spots on the
2 women's LaCrosse team as opportunity even though we
3 only have 30 players, you know, if two more LaCrosse
4 players came there. On the other hand, we have an
5 enormous amount of control over what LaCrosse players
6 come to the campus, and so if we wanted to, we'd fill
7 those two spots.

8 I don't think it's a clear-cut distinction.
9 I think holding a university to who shows up on the
10 field seems a little harsh. In a non-Division 1, we
11 have a lot of control over who comes and plays on our
12 fields. The context seems not appropriate.

13 In a Division 1 context where a school has
14 an enormous amount of control over who's coming and
15 who's playing the argument that gee, we just couldn't
16 fill those last four spots doesn't hold as much weight.

17 MR. TOM GRIFFITH: I've got a couple
18 questions, Ms. Leahy. Thank you very much for your
19 presentation.

20 My first question will show my proclivity
21 towards preferring Congressional intent to other
22 devices that understand the statutory language.

23 The question is in the Civil Rights
24 Restoration Act was there anything in the text of the
25 Act or the legislative history of the Act that was

1 directed towards intercollegiate sports in particular?

2 MS. CRISTA LEAHY: Yes. My
3 understanding is that the whole thing was specifically
4 directed at --

5 MR. TOM GRIFFITH: Well, I understand
6 that it was directed in making certain that recipients
7 of that requirement is now understood to be the entire
8 institution, but was there anything in the language of
9 the Act that was directed towards intercollegiate
10 sports in particular?

11 MS. CRISTA LEAHY: I don't know of any
12 particular language directed at sports. I mean,
13 there's clearly language directed at Title IX as
14 opposed to other civil rights statutes. But I'm not
15 aware of any language in particular directed to
16 intercollegiate athletics.

17 MR. TOM GRIFFITH: If that's so, then
18 there would be the Javits Amendment, which was the last
19 time Congress specifically addressed intercollegiate
20 sports in the context of Title IX.

21 MS. CRISTA LEAHY: If I'm correct,
22 there's nothing in the Civil Rights Restoration Act.

23 MR. TOM GRIFFITH: I think that's
24 significant because that would mean that the last time
25 Congress addressed the issue specifically of

1 intercollegiate sports in Title IX they were very
2 careful to say that there must be reasonable provisions
3 concerning the nature of particular sports. I mean,
4 that was something that was important to Congress then.

5 The next question is again about legislative
6 history. Do we know where the phrases of the 1979 OCR
7 policy statement came from? Do we know anything about
8 the history of how that language was developed and what
9 sorts of discussions went into the development of that
10 language that might give us some insight into the
11 history of the three-part prong and what the text might
12 mean there?

13 MS. CRISTA LEAHY: I don't know other
14 than, I mean, as I said, it was a formal notice and
15 comment procedure, so they issued a preliminary policy
16 interpretation, which to my understanding looked very
17 much like the final version.

18 As I said, the third prong simply mirrors
19 the 1975 regulations. To fully and effectively
20 accommodate the interest and abilities was the sole
21 factor essentially in the '75 regulations. So what
22 they did was they added the first two, the substantial
23 proportionality and the program expansion.

24 I don't know what went into that decision.
25 I don't know where they came up with those things. But

1 my understanding, but I think this is all sort of post
2 hoc people trying to get at what OCR meant, was that
3 substantial proportionality was meant to be the sort of
4 safe harbor provision, that a university could sort of
5 always know that it was in compliance with Title IX if
6 there was substantial proportionality. And the other
7 two were going to be sort of less frequently invoked.
8 But I don't know --

9 MR. TOM GRIFFITH: Do you know anything
10 about the history behind that language?

11 MS. CRISTA LEAHY: I don't know where
12 they came up with that language.

13 MR. GRAHAM SPANIER: I have two related
14 thoughts. You brought us up to the early to mid-'90s
15 but did not comment on the 1996 Cantu letter and what
16 shifts or impact that might have had, so I would like
17 to get your view on that if you have one and if you
18 think it's significant.

19 But then, too, a more broader issue, it
20 seems to me from my reading and from your comments that
21 great deference has been given by the courts to the
22 policy guideline regulations from 1979 and the
23 subsequent actions and letters, interpretations coming
24 out of the Department of Health and Human Services.

25 So I would assume because of that deference

1 and the weight that it has carried in judicial
2 decisions, but I would like your opinion on it, that a
3 new letter -- if this Commission were to come up with
4 suggestions that the issuance of a new letter would be
5 or could be the primary vehicle by which new guidelines
6 could be communicated as opposed to getting back to the
7 prior discussion, additional legislation being
8 necessary.

9 MS. CRISTA LEAHY: With regard to the
10 Cantu letter, one of the reasons I didn't bring it up
11 is because I actually haven't been as on top of Title
12 IX research since 1996. I have read the letter, not
13 recently, and my understanding was that it didn't do
14 that much to clarify. My reaction to it was, okay, but
15 really where are we?

16 That said, then, I would say courts have
17 been extremely differential to the policy
18 interpretation. But the policy interpretation was not
19 a letter, it was arguably a -- it's either legislative
20 or interpretive rules, to use the proper phraseology,
21 but it's an administrative body acting in 1975 in
22 pursuant to Congress.

23 So there's no doubt that the 1975
24 regulations do have the effective law. Congress
25 specifically said to the HEW, go do this, and they did

1 it. And in that situation the 1975 regulations have
2 the effect of law.

3 It's debatable whether the 1979 regulations
4 should get as much deference as they do. But they were
5 regulations, they weren't a letter.

6 I don't know, quite honestly, what the '96
7 letter, what weight that's been given in litigation. I
8 don't know that you need an act of Congress to make any
9 changes because I think we're all talking about nuance
10 changes. We're not talking about repealing the
11 statute, we're not talking about saying, oh, we don't
12 really mean that Title IX applies to intercollegiate
13 athletics. I think the nuance changes that we're
14 talking about don't necessarily need an act of
15 Congress. But I think to effectively solve the problem
16 more than a letter would be suitable; either something
17 through OCR that has a sort of more formal notice and
18 comment period rather than just a letter, or if you
19 could get an act of Congress that's not the Restoration
20 Act, something that's not so substantive, but rather
21 saying Congress recognizes that Title IX is kind of a
22 mess right now, people are very upset, we direct the
23 Department of Education's Office on Civil Rights to
24 issue a new policy interpretation setting out the
25 enforcement of Title IX.

1 If that happened, that would be virtually
2 the same as if Congress had acted, except, like any
3 administrative agency, you have the expertise of rather
4 than having Congress doing it and not knowing the
5 nuances of Title IX's applications, today you have OCR
6 doing it with better input.

7 Ideally, I think that's the way to go.

8 MR. TOM GRIFFITH: Thank you. That was
9 a very informative presentation. I asked this question
10 yesterday because I think it's very much on the minds
11 of a lot of our co-workers, and I would like to have
12 kind of a response from someone in the legal
13 profession: Is there the guidance necessary for
14 institutions today to show that they are in compliance
15 using parts two and three of the test?

16 I don't want to put words in your mouth, but
17 I thought that you said that in a court of law it would
18 be very difficult for an institution to say that it was
19 meeting the needs and abilities of women if those women
20 were taking you to court saying that weren't the case.

21 Well, in the other part of the test, what
22 does expanding opportunities mean? Does it mean a
23 sport a year, a sport every three years, a sport every
24 four years? I would be interested to hear what you
25 think is that guidance there. And then also, if you

1 could say whether it would be upheld in a court of law,
2 and how often do you have to have a sport?

3 MS. CRISTA LEAHY: Well, I'm sure, as
4 you know, there's no clear indicator of what program
5 expansion or what continuing means in terms of the
6 second prong.

7 Brown had added 13 sports in something like
8 eleven years, but had done it too long ago in the
9 posture of litigation. So we can say assuredly that
10 nine years is not continuing, a gap of nine years in
11 the Brown situation was not continuing.

12 I don't know what it is. And I guess the
13 answer to your question is I don't know that
14 universities have enough clear guidance on what does it
15 mean. I think if you added a sport a year for a couple
16 of years and then were sued, you would have a pretty
17 good case about program expansion.

18 I don't know of a case where that actually
19 has happened, but, you know, a sport a year is a lot.
20 But anything beyond that gets a lot harder to judge. A
21 couple of sports over a five-year period, I'm not clear
22 whether that's right.

23 I think in reality, none of these prongs are
24 really -- well, that's not true. Substantial
25 proportionality is considered by itself, I mean, it's a

1 numbers game, but program expansion probably isn't
2 really considered by itself.

3 I mean, there's always the background of
4 well, what are the numbers and how many athletes? I
5 mean, you could have had an awful, awful athletic
6 department with practically no opportunities for women
7 and you can add, you know, a sport a year for six years
8 and then you get sued. You still look really bad. You
9 know, you're 20 percent off of substantial
10 proportionality, you've got tons of women who could
11 compete and want to compete. I think a court is
12 probably going to say it's sort of program expansion,
13 but no. I mean, you just look too bad.

14 So I think it's read with the other prongs
15 in mind. I think the problem for universities is in
16 reality, the only way to really comply with Title IX is
17 substantial proportionality because it's the only way
18 you know for sure. If I get sued tomorrow, I'm okay,
19 because if you get sued, at least according to the way
20 the Cohen case came out, if you get sued, then it's
21 quite obvious there are female athletes that have
22 interest that their interest is not met.

23 So there is at least a team, if not two or
24 three, with ability. And in reality, most schools
25 right now aren't really expanding their programs very

1 much. That's why we're hearing all this about men's
2 programs being cut. I don't know of too many schools
3 anywhere that can really demonstrate continuing program
4 expansion through the late '90s and the earlier part of
5 this century.

6 So the only way to be sure that some
7 plaintiff is not going to serve you with papers
8 tomorrow and that you won't lose is to be substantially
9 proportionate, I think. I think those other two tend
10 to fold into that, and that's why we have such enormous
11 debate about what those numbers mean and whether
12 undergraduate enrollment is the right point of
13 comparison.

14 MR. BRIAN JONES: Well, I too want to
15 thank you for a thorough presentation today and just
16 want to tell you how important I think that your
17 article is.

18 I actually discovered your article years ago
19 when I was in private practice representing colleges
20 and universities and trying to help them navigate the
21 shoals of Title IX compliance, and your article was
22 immensely helpful to me and to clients at the time.
23 It's a very thorough study.

24 But one theme I do want to talk about that
25 does get into the '96 clarification letter that Graham

1 mentioned and that we haven't really touched on today
2 is the safe harbor notion. And there's been an
3 argument certainly of the National Wrestling Coaches
4 Association complaint against the Department, sort of
5 makes the argument that the '96 clarification in part
6 is at fault for creating this notion of safe harbor,
7 although I think the courts sort of recognized that
8 notion even before that letter came out.

9 But I wanted to get your thoughts on this
10 idea of the safe harbor, particularly in light of what
11 you just said when you talk about how, you know, while
12 each of the three tests is a separate measure of
13 compliance and schools can choose to comply with any of
14 the three tests, you made an argument in the article,
15 and I think some schools have complained, that there is
16 sort of a proportionality component really to each of
17 them.

18 It sort of begs the question, because one
19 argument as we at the Department of Education sort of
20 look at what sorts of things we might do and the
21 Commission looks at what we might be doing here and
22 sort of clarify things a bit, you know, one thought
23 that I've often heard is to say, well, why don't you
24 just get rid of the whole safe harbor notion because
25 the safe harbor notion voids the substantial

1 proportionality test, sort of directs institutions in
2 that direction.

3 But would this problem or the perceived
4 problem out there really be alleviated by either
5 eliminating the safe harbor notion or by vesting the
6 safe harbor in another one of the three tests? I mean,
7 would that alleviate this reliance on proportionality,
8 or, because of what you said, proportionality component
9 that sort of a part of each of the three tests, would
10 that complicate the effort to do something about the
11 safe harbor issue unless we did something about the
12 proportionality problem?

13 MS. CRISTA LEAHY: I think if you put
14 the safe harbor provision in one of the other two
15 prongs, well, I think you would have to put it in the
16 effective accommodation prong; and unless you clearly
17 defined what accommodation means, we're going to wind
18 up in exactly the same position, because if you're a
19 university and you're trying to comply, how do you know
20 if you're fully and effectively accommodating? Well,
21 statistics tell me that. And what statistics am I
22 looking for? I'm looking for substantial
23 proportionality, because you could have a hypothetical
24 university that has a 50/50 gender split undergraduate
25 enrollment and happens to have an enormous athletic

1 female population that's extremely interested in
2 athletics and the men are nerds, and so at this school
3 in reality 70 percent of the women are interested in
4 athletics and only 30 percent of the men are. But you
5 don't really have to accommodate that 70 percent of
6 interested women, you only have to accommodate them to
7 the extent that they are representative of the
8 undergraduate enrollment. So when, you know, the First
9 Circuit says Brown's reading of full and effective
10 accommodation, substantial proportionality tells Brown
11 that they can do that.

12 Now, maybe that's too hypothetical a
13 situation, but it's the way that the prongs work out.
14 And the same with effective program expansion, when do
15 you get to stop? I don't know. I wouldn't want to
16 advise you to stop unless you had substantial
17 proportionality.

18 So I think the numbers underlie both the
19 second and the third prong, and unless you can figure
20 out -- I don't know what to do with that second prong,
21 and I think in reality now with the era of budget
22 issues and whatnot, it's not that valuable. I don't
23 think a university, unless it's starting from scratch,
24 is ever going to really make a huge difference in that
25 area.

1 So we focus on the third prong, and unless
2 there's a lot more guidance given about what full and
3 effective accommodation means and it somehow is
4 measured not relating to statistics, I guess it could
5 work, but right now I think everything sort of folds
6 into substantial proportionality. That's what sort of
7 handcuffs universities.

8 MR. TED LELAND: The next question,
9 Bob.

10 MR. BOB BOWLSBY: Well, I think this
11 discussion has been good, but it has a little bit of a
12 feel of a dog chasing its tail that many institutions
13 have felt with regard to the three-prong test.

14 I think yesterday during our discussions we
15 heard a lot of talk about flexibility, and I think
16 there was a fair amount of contention as to whether the
17 law was too flexible or whether it wasn't flexible
18 enough.

19 I think what we've heard you say is that if
20 there's any group of any size that could constitute a
21 group of plaintiffs, that prong three is never going to
22 be successfully defended. Prong two, we all know, is a
23 temporary solution, so prong one becomes the only real
24 outcome for institutions.

25 As we work our way through this and as we

1 continue to hear testimony from around the country,
2 what guidance can you give us? In going back to
3 Brian's question, I think institutions are always going
4 to be seeking the opportunity to have some breadth of
5 local determination on how they go about doing the
6 right things for the students at that institution.

7 You identified whether the undergraduate
8 student population is the right comparison group. What
9 guidance do you have for us as we go forward to try and
10 determine is it too flexible or is it not flexible
11 enough, and do institutions based upon the discussion
12 we heard this morning really have any flexibility to
13 permanently or even long-term temporarily put
14 themselves in a safe harbor?

15 MS. CRISTA LEAHY: I don't think
16 there's an enormous amount of flexibility. I don't
17 know that flexibility is an objective, but if it is, I
18 don't think we're accomplishing it.

19 I don't know how to give universities more
20 flexibility unless we figure out another way to gauge
21 interest. I concede it is extremely complicated. I
22 mean, it is so determined by region, by level of
23 division. In Division 1 it's pretty easy; you know,
24 the school determines who walks onto the campus. In a
25 lot of situations it's scholarship, coming to

1 campus.

2 Division 2 and 3 it's much harder. I mean,
3 you could poll every senior who's taking the SAT or
4 ACT, but, I mean, what does that mean and what are you
5 going to ask them? And how many 17-year-olds change
6 their mind between the time that they take the SAT and
7 when they get to college and realize what college is
8 all about whether they actually want to participate or
9 don't?

10 I don't know what I would say to a
11 university other than I would expend some effort trying
12 to engage interest at that particular university. It
13 hasn't been successful, but I don't think it's a waste
14 of time, especially in a Division 2 or 3 school where
15 you don't have as much control over who's coming.

16 It's a tricky issue. I hate to sort of sit
17 here and point out all the problems and then say, well,
18 I don't know what any of the solutions are, sorry. I
19 do think it's a difficult issue. I don't think that
20 there's flexibility now.

21 I don't know why there necessarily should be
22 flexibility either, I mean, if we think that the goal
23 of Title IX is a good one. If we figure out the right
24 criteria, if we say -- if we figure out the right
25 point, we might argue about whether the undergraduate

1 body is the right point of comparison or whether the
2 fact that there's plaintiffs means that really there's
3 not any interest, but if we can figure out those
4 distinctions, if we figure out a better point of
5 comparison or figure out a better measure of interest.

6 I don't know why we necessarily want
7 universities to have that much flexibility. I mean, we
8 have lots of laws out there, and we don't necessarily
9 always want people having enormous flexibility in how
10 they come into compliance. But in my opinion there's
11 not now.

12 MR. TED LELAND: You got about two more
13 minutes.

14 MR. TOM GRIFFITH: We've heard about a
15 number of arguments yesterday by those who were
16 critical of substantial proportionality that went
17 something along this line: If you take the principle
18 of substantial proportionality and apply it to the rest
19 of the university, that you will wreak havoc with
20 choirs, engineering schools, things of that nature.

21 Do you have a view on that? Is that a
22 realistic concern that one ought to have about
23 substantial proportionality?

24 MS. CRISTA LEAHY: I think it is true
25 that we would never use that kind of venture in

1 anything else. I mean, when I went to college, there
2 were way more men engineers than women. I don't know
3 what would have happened if all of a sudden they came
4 to us and were pressing us to become engineers so that
5 47 percent of the engineering department was women. It
6 was a self-selection problem. I don't think they cared
7 that much.

8 We don't use it in any other context, to the
9 best of my knowledge, and I think we don't because it's
10 not a relevant point of comparison. But we don't have
11 a federal law saying we won't discriminate in the
12 selection of our choir. We do have a federal law that
13 says we won't discriminate in educational
14 opportunities, and we do -- you know, if I wanted to be
15 an engineer and they told me I couldn't, arguably I
16 would have a nice Title IX case. And they would defend
17 it on the fact that I wasn't qualified to be in the
18 engineering department.

19 In the athletic arena that's a hard case.
20 We wind up with a lot of litigation about whether teams
21 are good enough or whether athletes are good enough to
22 compete. I don't mean to defend the point of
23 comparison. I think in other contexts it's a little
24 bit easier to use merit criteria, whereas in athletics,
25 because they are single sex for the most part, it's

1 harder to say in the litigation posture, these
2 plaintiffs are here, but really they are not good
3 enough. We can start a water polo team, but we would
4 get killed. And why are you going to make us start it?
5 Whereas, well, she could be an engineer, but her grades
6 in math were terrible, and we don't want her to be in
7 the department.

8 So it's a little bit easier.

9 MR. TED LELAND: Donna, the last
10 question.

11 MS. DONNA de VARONA: In the
12 discussions about proportionality and interest, that
13 really goes to the heart of this debate about Title IX,
14 and this Commission has been created to look at the
15 whole athletic opportunity within our collegiate
16 system, and in this first meeting we are focused on
17 Title IX. First of all, do you consider
18 proportionality a quota system?

19 And secondly, if we do measure interest, if
20 we find out a way to measure interest and we got rid of
21 proportionality, is it possible that in the end in an
22 institution that's focused on revenue producing sports
23 and making profits, that we would wind up with a
24 situation that all minor sports would disappear from
25 the collegiate environment, so that men and women both

1 are penalized by the desire to protect profit-making
2 sports if you look long-term?

3 MS. CRISTA LEAHY: On the first
4 question, which is very direct, actually, I do. I
5 think until we have high school participation rates
6 that reflect the gender division in the collegiate
7 undergraduate enrollment, so assuming that basically
8 college is 50/50 men and women, until we have able
9 athletes graduating from high school who are a 50/50
10 split, I think it's hard to see that substantial
11 proportionality is anything but a quota system.

12 I think getting to the point of 50/50 with
13 graduation is the right goal, and you start that when
14 you're 5 years old or 2 years old or when it's okay to
15 bring the baby girl a baseball glove to the hospital
16 instead of a doll.

17 But I think starting it at the point between
18 high school and college and going from something like
19 38 percent in high school to mandating 50 percent in
20 college or 47 percent it just has to look like a quota
21 system.

22 With regard to the revenue producing sports,
23 first my understanding is that most so-called revenue
24 producing sports are not actually producing any
25 revenue, so I think it's a minor concern, but

1 nonetheless a completely legitimate one. And even if
2 -- I think there's an intangible of even if your
3 football program is losing money sort of on paper,
4 there's the intangible factor of donors like to come
5 back on a Saturday afternoon in October and watch the
6 football team, and we want them to write a check at the
7 end of the game, and we're not to the point yet where
8 they are going to come back and watch a soccer game in
9 most schools, men or women, or a LaCrosse game, and so
10 it tends to focus around men's basketball and men's
11 football. And that's an intangible that can't be lost.
12 Even if the program is losing money, it might be
13 generating income for the university. And that's
14 important because that means income for everybody.

15 If we only focus on interest, that was your
16 question, if we only focus on interest, we'd wind up
17 with sort of big time schools with big time programs
18 cutting every minor sport.

19 MS. DONNA de VARONA: And we'd lose
20 the first prong of proportionality. Is it possible
21 that we would lose all minor sports on our collegiate
22 campuses, because if you can cut a men's sport, you can
23 then cut a women's sports? It's a serious
24 consideration, I think.

25 MS. CRISTA LEAHY: I don't see how,

1 though, unless all of a sudden people are just less
2 interested. If we effectively measure interest, then
3 why would we think at, you know, X university that is
4 generating revenue in its football and basketball
5 program but is still defined as an academic
6 institution, that if we're really measuring the
7 interest there, why would we think that there's no
8 interest in a women's LaCrosse team or a men's soccer
9 team? If that's what you mean by --

10 MR. DONNA de VARONA: The wrestling and
11 gymnastics teams have been cut across the country, and
12 the interest is there but they've been cut, and the
13 focus is because of Title IX and proportionality. They
14 feel they are being sacrificed because of Title IX.

15 And I don't think we make this assumption
16 that every revenue producing sport makes a profit.
17 Statistics show that almost 80 percent of programs lose
18 money. And the decision by those that finance the
19 teams and make budget decisions are, for the reasons
20 you stated, it's intangibles that keep a football team,
21 but oftentimes those minor sports are sacrificed.

22 If we got rid of proportionality, could we
23 see the day that we would have football and basketball
24 teams and an assortment of some minor sports, because
25 many minor sports, as we're seeing, are going to

1 disappear from the collegiate environment?

2 MS. CRISTA LEAHY: I don't see it
3 unless, you know, all of a sudden socialization was,
4 you know, don't be a male gymnast or don't be a swimmer
5 or whatever we consider the minor sports. I mean, if
6 we're effectively measuring interest, it shouldn't
7 matter what's going on with the football and basketball
8 program at a school.

9 MS. DONNA de VARONA: But what's
10 happening is we're losing men's minor sports, and
11 proportionality and Title IX is being blamed as the
12 culprit, not the decision of the university to focus on
13 income-producing sports.

14 MS. CRISTA LEAHY: But the university
15 right now is not in a position to be able to focus
16 specifically on interest without worrying about the
17 proportionality background. So it's a sort of
18 hypothetical that -- it is a vicious circle, but
19 substantial proportionality is at the heart of it. And
20 if you could take it out, it's hard to -- I don't see
21 just why the logic would be -- if you could
22 legitimately focus on interest without ever having to
23 think about numbers, why you would see minor sports
24 being cut even if we saw an enormous focus on the
25 so-called revenue producing sports.

1 MR. TED LELAND: I really appreciate
2 you coming. We're not able to pay you overtime.
3 That's sarcastic because we are not able to pay you at
4 all. But we appreciate you coming. It certainly gives
5 us a great background. Thank you very much.

6 If our next three speakers could approach
7 the table. What we will do now is have a second one
8 hour session where we have three speakers. Each
9 speaker has been asked to prepare a five to ten minute
10 presentation. We'll go through those presentations
11 following the introductions, and then we'll have time
12 for questions and answers.

13 And for each of the presenters, at the nine
14 minute mark of your presentation, we'll say one minute,
15 and then we'll hope you can wrap it up from there.

16 MS. CYNTHIA COOPER: Before we get
17 started and go any further, can we have everyone turn
18 their cell phones, pagers, things of that sort, off.

19 Coach Grant Teaff was named as the
20 Executive Director of the American Football Coaches
21 Association in 1994 after a distinguished 21 year
22 career as head football coach at Baylor University.

23 Under Coach Teaff, the AFCA has increased
24 the membership roles to more than 8,000 coaches
25 worldwide as well as the number of committee men

1 involved in the organization.

2 Coach Teaff's personal honors are numerous
3 and include distinguished awards from Baylor
4 University, the Texas High School Coaches Association,
5 the Football Writers Association of America, as well as
6 this year's induction into the College Football Hall of
7 Fame.

8 Coach Teaff, congratulations.

9 MR. GRANT TEAFF: Thank you very much.
10 It's a pleasure to be with you today, and thank you for
11 the invitation to share in this very important series
12 of meetings that I believe will have a very profound
13 effect in years to come on collegiate athletics in
14 particular.

15 I'm not used to reading a statement, but
16 because of time constrictions and my sometimes
17 wandering when I discuss certain issues, I want to at
18 least sort of read this statement that we were asked to
19 prepare in this very short amount of time that we have
20 together.

21 And I would start by just saying that I
22 really suppose that I could be considered an epitome of
23 a representative of football. I played high school
24 football in a small town in west Texas. I was inspired
25 by my high school coaches and teachers to fall in their

1 footsteps. I did not have the total athletic skills to
2 earn a scholarship, so I walked onto a Junior College,
3 received a partial scholarship, worked, and then
4 received a full scholarship to a Division 3 program.

5 I coached one year in high school, nine
6 years in Division 3, three years in Division 2, and 24
7 years in Division 1-A. I was the head football coach
8 on all three levels. I've served as an Athletic
9 Director in Division 1-A, and for the last nine years
10 I've been privileged to be Executive Director of the
11 American Football Coaches Association.

12 The AFCA is made up of 10,000 now members,
13 high school, college, pro football coaches, who
14 incidentally have through all of these years
15 overwhelmingly supported Title IX.

16 The American Football Coaches Association
17 believes that every child in America ought to have the
18 opportunity to participate in athletics if that's their
19 wish. The original framers of Title IX had good
20 intent, and it has accomplished much. However, the
21 concept of proportionality beginning with the things
22 that took place under Norma Cantu in the Office of
23 Civil Rights in the '90s have turned what otherwise was
24 outstanding legislation into something that really was
25 not intended, with a lot of negative consequences.

1 Every coach and educator should be, and I
2 believe is, very pleased with the accomplishments in
3 women's athletics. Improvement nationwide,
4 particularly in so-called large revenue producing
5 football institutions, has really been spectacular.

6 These same institutions that produce large
7 revenues through their football programs have borne the
8 brunt of continuous attacks. It's time, I believe, and
9 our association has believed for a long time now, to
10 stop the quota based culture that has developed in
11 college athletics.

12 Approximately half of football playing
13 institutions have capped participation in football. In
14 Division 1-A only 20 walk-ons may start practice within
15 the institution. Young men are being denied the
16 opportunity to pay their own way and participate as a
17 walk-on in football programs. Tragically, according to
18 the General Accounting Office, since the passage of
19 Title IX in 1972, more than 170 wrestling programs, 80
20 men's tennis teams, 70 men's gymnastics teams, and 45
21 men's track teams have been shut down. That's more
22 than 80,000 participants in men's sports lost.

23 In 1995 the American Football Coaches
24 Association Board of Trustees called for Congressional
25 hearings on Title IX. In a January 11th, 1995, news

1 release the AFCA called on Congress to hold hearings on
2 the fairness of the Title IX policies and the
3 interpretations concerning college athletics.

4 The AFCA Board made it very clear that AFCA
5 supports full and fair access to intercollegiate sports
6 for women and is committed to the principles which
7 prompted the passage of Title IX.

8 In America today we have over 700 college
9 institutions that field football teams. They range
10 from scholarships to nonscholarships, and by far, the
11 majority of those playing do not receive scholarships.

12 It is not Title IX that is the issue, it is
13 the interpretation. The interpretation has in many
14 ways been illogical, unfair and contrary to
15 Congressional intent.

16 Title IX has been carried to lengths, never
17 contemplated by the statute's authors, resulting in
18 many unforeseen harms to athletics and educational
19 opportunities for both men and women throughout all
20 levels of collegiate athletics.

21 The calling for those hearings in 1995
22 brought about hearings. In Congress this issue was
23 discussed at length. Over the years the Congress of
24 the United States has responded, many in individual
25 instances, to the concerns of those in college

1 athletics. And many times -- and I have in my
2 possession several of the letters written by members of
3 Congress for the Office of Civil Rights asking for
4 reinterpretations of the concepts that were being used.

5 One of the things that I mentioned early on
6 had to do with the attacks on college football, and we
7 understand that because when you tie proportionality in
8 to the numbers that participate in football, it is an
9 obvious target.

10 In the first meeting I attended as one of
11 the original members of the NCAA Gender Equity Issues
12 Committee in 1992 /93, I was then the head football
13 coach and Athletic Director at Baylor, the first
14 question posed to me by those in the room that were for
15 proportionality was why in college football in Division
16 1-A can you not play with 47 players as they do in the
17 pros?

18 I meticulously at that time tried to explain
19 that that is an incorrect assumption. And that has
20 never changed, but the belief by certain individuals
21 that Division 1-A should go to 45 scholarships or 47
22 instead of 85 has remained the same.

23 The truth is that professional football has
24 to infinity. They have 47 athletes that they can have
25 at any one time, but they can replace those any time

1 they want to. If somebody gets hurt, they replace
2 them. They have practice squads and they have injury
3 squads where they have an average of 95 players at any
4 one time.

5 So that assumption was incorrect. And we
6 have tried in many ways to make sure that everyone
7 understands that. Football does not like being the
8 culprit because we want young people to have the
9 opportunity to participate.

10 We are now denying that opportunity and
11 denying it in many sports as well as football. That's
12 not right. I don't know what can be done, but I am
13 thankful that you all are here to hear all the various
14 rationales and then to try to come to some conclusion
15 that could be helpful. And I appreciate being here and
16 will be happy at any time to try to answer any of your
17 questions.

18 MS. CYNTHIA COOPER: Thank you. Gary
19 Phillips, Assistant Executive Director of the Georgia
20 High School Association, began his work with the
21 Association in 2001.

22 Prior to his current position, Gary was
23 Principal of Fayette County High School in
24 Fayetteville, Georgia from 1986 to 2001 and an
25 Assistant Principal from 1984 to '86. Gary spent 16

1 years as a teacher and coach at various high schools in
2 Georgia. During that time he brought his teams to
3 three state championships and received coach of the
4 year honors in four sports.

5 MR. GARY PHILLIPS: Thank you. I would
6 like to say I'm here representing the Georgia High
7 School Association on behalf of our Executive Director,
8 Ralph Swearington, who is attending some National
9 Federation meetings in Indianapolis so you drew the
10 second fiddle, as it were, otherwise Dr. Swearington
11 would have been here and probably would have been a
12 much better representative of our organization.

13 Not knowing exactly what you would like to
14 hear about the athletic and extracurricular programs in
15 this state, I'll just talk about our organization and
16 give you some facts about participation and so forth,
17 and then, as Coach Teaff has said, if there's some
18 questions, I'll be glad to try to answer them.

19 The Georgia High School Association is one
20 of 51 members of state associations that makes up the
21 National Federation of State High School Associations.
22 And I understand that you heard from Ms. Doyle from the
23 National Federation yesterday. We're a part of that
24 organization.

25 In our organization, which is purely

1 voluntary, we have 335 public schools and 47 private
2 schools. Some states do not allow private schools in
3 their organization, but we do. Our schools are broken
4 into five separate classifications based on school
5 size, and then they compete in various activities at
6 what we call a region level or an area level and then
7 move into championship play beyond that.

8 We do, as I just said, supervise programs
9 beyond athletic competition. Some state associations
10 do that, some do not. Hence, we're not called the
11 Georgia High School Athletic Association as sometimes
12 we're stuck with that tag, but we do go beyond that.

13 We do have and offer activities in debate,
14 music, literary, and music activities. Our basic
15 philosophy and the philosophy of the organization,
16 which is more than 50 years old in this state, has been
17 that we exist for the benefit of all students and that
18 we understand that athletics is simply the other half
19 of education.

20 Our rules, policies and procedures are
21 basically focused on all athletes, and we tend to try
22 to work toward the kids who are not the elite athlete.
23 We are grateful that this state has had a number of
24 elite athletes over the years that are in collegiate or
25 professional ranks, but our focus is basically on the

1 good, hard working team player. And that's our central
2 focus.

3 We're trying to explore, and I've seen in
4 the 14 months that I've been in the office emphasis on
5 trying to increase participation in all the activities,
6 and we believe that is our central focus and not that
7 we're a farm team for the NCAA or for any professional
8 activity.

9 As you all well know, many of the kids who
10 play in high school never go anywhere else. When they
11 play their last game, their career is finished.
12 Basically our emphasis is that we try to relay to the
13 schools and coaches and athletes that we're here to
14 develop and maintain a healthy work ethic. We believe
15 in respect for authority and figures and obeying the
16 rules and playing by the rules, and we also stress that
17 we should be able to handle adverse situations without
18 violence. Sportsmanship has been over the past few
19 years a central focus, or one of the other focuses that
20 we have in our organization.

21 Our mission statement reads: The objective
22 of the organization shall be the promotion of education
23 in Georgia from a mental, physical and moral viewpoint,
24 to standardize and encourage participation in
25 athletics, to promote sportsmanship, and to develop an

1 appreciation for and study of music, speech and other
2 fine arts through region and state competitions.

3 Currently we field championships in 11 male
4 sports, in 12 female sports, and then we have two
5 activities that we consider coed sports, and then also
6 in the other related activities we have in music and
7 arts two male, two female and six coed activities.

8 Some of you know, many of you probably
9 already know, Georgia passed some gender equity
10 legislation within the last couple of years, and our
11 organization began immediately to implement what we
12 call some gender neutral principles to deal with the
13 legislation that we were going to be compelled to work
14 within.

15 For example, we have begun championships in
16 several new sports, golf and LaCrosse most recently.
17 When I coached, the only female athletic activity we
18 had was cheerleading, and then along came girls' track,
19 and so the state has grown greatly since then. But
20 golf and LaCrosse are the two most recent activities
21 that we've added. So we've tried to give large
22 consideration to those activities in adding women's
23 sports and adding them for championship consideration.

24 And also, we have worked and over the last
25 two years have standardized all of the seasons so that

1 there's not disparity between major sports and minor
2 sports with the exception of the football season here
3 and basketball and wrestling.

4 If you think about it, the reason basketball
5 presently runs a little longer is because of Christmas
6 and the way it intervenes with the school calendar.
7 But all other sports in this state operate off of a
8 standardized season, and then with similar rounds of
9 play to determine champions.

10 We feel that we have a lot of good things
11 going for us here in this area of participation,
12 particularly in female sports.

13 I went back and looked at some participation
14 numbers that we've had in our office for some time, and
15 in the last ten years or so we've seen almost a 31
16 percent rise in participation in male sports state
17 wide, but we've seen a 105 percent rise in
18 participation in women's activities.

19 If you take cheerleading out, which is a
20 point of contention for our office in that we feel like
21 it is discriminated against, then the rise in female
22 activities is 89 percent.

23 So with cheerleading being the fastest
24 growing sport nationally, we feel it's time that it got
25 its due as well. If you don't think they are athletes,

1 ask one of them's moms about whether or not their
2 daughter is an athlete if she's on a cheer team.

3 We also had last year 117 male participants
4 in cheerleading. So we have some schools now who have
5 all female teams and we have some who have male and
6 female mix. And we are fielding at this point
7 inquiries, I guess, to where a lot of schools in our
8 state would like to see us separate cheerleading into
9 female only competition and then the coed competition,
10 but we haven't arrived at that point yet.

11 Last year in Georgia we had 88,664 male
12 participants. 25,000 of those were football players.
13 So if you take that number away and look at 55,245
14 women athletes, the numbers between male and female
15 participants in this state is very close.

16 Those are the things that I wanted to try
17 and share with you at this point. And again, like
18 Coach Teaff said, I'll answer some questions if you
19 have them.

20 MR. TED LELAND: Thank you. Next up is
21 Ron Mirikitani. He's in his 33rd year as a Professor
22 of Physical Education and head wrestling coach at St.
23 Louis Community College, where he has achieved a record
24 of 392 victories, which is best in the history of
25 Junior Colleges. Ron's also in a number of Hall of

1 Fames; the National Wrestling Coaches Hall of Fame, the
2 United States Marshal Arts Hall of Fame, the Universal
3 Marshal Arts Hall of Fame and the National Judo
4 Institute Hall of Fame.

5 He's been President of the National Junior
6 College of Wrestling Association. As a side line in
7 case any of our Commissioners want to ask a pertinent
8 question, he's also a seventh degree black belt in both
9 judo and karate.

10 So Ron, we're anxious to hear what you have
11 to say.

12 MR. RON MIRIKITANI: Good morning. The
13 purpose of this panel is to discuss Title IX and the
14 opportunities for participation, so I went and called
15 the National Office of the NJCAA and got some
16 statistics.

17 The first series I would like to share with
18 you are obtained for sports. And I picked these four
19 sports out because they pertain to the Olympic
20 movement.

21 In 1979 gymnastics on the Junior College
22 level had 14 teams that participated. In 2002, this
23 year, there are none participating. In track and field
24 there were 169 teams that participated. This year
25 there were only 68. In swimming and diving there were

1 46 teams in 1979. Today there are no teams. And in
2 wrestling, in 1979 there were 140 teams. Today there
3 are 44.

4 In the last Olympiad the United States won
5 two medals, one gold medal, one silver in Grecco Roman
6 wrestling, by Ron Gardner and Matt (inaudible). Both
7 of those young men were Junior College National
8 Champions before they went on to other schools. So we
9 have a proud division of wrestlers.

10 On a much broader base, I got information
11 about the total number of men and women who
12 participated in athletics. Since 1991 the number of
13 men participants lost 1,397 athletes and the loss of
14 166 teams. In that same time frame, 1991 to present,
15 in the women's category there's been a gain of 3,355
16 athletes and a gain of 197 teams.

17 I really solute the NJCAA for their vision
18 and commitment to promoting women athletics. Again,
19 I'll read those numbers. Women have gained 3,355
20 athletes and gained 197 teams.

21 I have been privileged to be the President
22 of the NJCAA Wrestling Coaches Association since 1988,
23 and so I would like to focus now in the area of
24 wrestling.

25 In the last 30 years we've lost over 400

1 programs. Because of the loss on the college level, I
2 wanted to try to find out the participation on the high
3 school level.

4 I got in contact with the National
5 Federation of State High School Associations, and they
6 sent me some stats. I was very happy to see that
7 wrestling has grown substantially in the last eight
8 years. Wrestling has its total enrollment of
9 participants in men's wrestling of 244,998. That is
10 the sixth largest in participation. It is only behind
11 football, basketball, track and field, baseball, and
12 soccer. So wrestling is very, very popular.

13 There are 50 states that participate in
14 wrestling. There's only one state that does not have
15 men's wrestling, and that's the State of Arkansas.

16 On a side note, my son told me last week
17 that the toothpick was invented in Arkansas. I said, I
18 didn't know that. He said, yeah, there's a men's
19 subway sandwich called a toothpick.

20 There are also 41 states that have women's
21 wrestling. So women are now also becoming very, very
22 popular in sports.

23 With so many high school wrestlers in the
24 nation, I tried to find out the percentage of NJCAA
25 schools that had a program in those states. California

1 had the biggest number of participants at the high
2 school level. They had 24,326 participants.

3 There's only one NJCAA Junior College in the
4 State of California. Illinois is number two with
5 14,367. There are seven schools at the Junior college
6 level in Illinois. Ohio has 13,468 participants.
7 There are no schools in Ohio Junior Colleges that have
8 wrestling. Michigan has 12,064, and there's only one
9 school in Michigan with a Junior College team. And New
10 York, number five in numbers, is 11,980, and there are
11 five Junior College schools that have wrestling.

12 Other states that have very strong state
13 high school programs, Iowa, there are only three NJCAA
14 wrestling programs in Iowa. Oklahoma, there are no
15 Oklahoma schools. Pennsylvania has two. Colorado has
16 zero. Indiana has zero. Minnesota, Division 1
17 champions last year, they have four Junior Colleges in
18 their state.

19 Last week after a staff meeting one of my
20 colleagues came up to me and she had read about women's
21 wrestling, and she asked me my opinion about women in
22 wrestling, and so I gave her the obvious things of
23 conditioning and the mental toughness and that type of
24 thing. And she said, well, do you think the women can
25 actually wrestle, and what's really the advantage of

1 wrestling? And I had the feeling she was asking
2 primarily what worth does wrestling have?
3 It's hard to put in words exactly what
4 wrestling can do to an individual. I said, let me give
5 you a couple of examples. I said, you remember the
6 tragedy of 9-11, and she said, oh, sure. I said, what
7 a lot of people don't understand is on that flight,
8 United Airlines Flight Number 93, there was a young man
9 on that flight, he was a former wrestler from New
10 Jersey. He made a phone call to his wife and told her
11 that they were under attack, they were being hijacked,
12 he and two other guys were going to try to get the
13 plane back. A few minutes after that phone call that
14 plane crashed just outside of Pittsburgh. And I said,
15 you know, what is it that allows a man like this to do
16 something, to give up his life?
17 All the people in the wrestling sector
18 consider him a hero. I said, let me ask you another
19 question. I said, two years ago a young man from
20 Simpson College, his name is Nickie Ackerman, his
21 dream, like most athletes, was to be a national
22 champion. He had a good season. He had four losses.
23 He took second at the national qualifying tournament.
24 That gave him sixth seed in the national tournament.
25 Surprisingly, he wrestled very well through the

1 tournament and got to the finals.

2 In the finals he had to wrestle the
3 defending national champion, who had 60 straight wins,
4 and he won that match 13 to 11. And she said to me,
5 athletics are great, but there are a lot of upsets.
6 That's what makes athletics so important. What is so
7 important about this young man?

8 I said, what people don't understand is that
9 at a young age he had both of his legs amputated from
10 the knee down because of spinal meningitis. He won a
11 national title without two legs.

12 You could see the tears swell in her eyes.
13 She said, that's an amazing story. I said, you know, I
14 have been in wrestling a long time and I said, let me
15 tell you one more story. I said, I did my graduate
16 work at Iowa State University and had the privilege of
17 working with Dr. Harold Nimitz and Les Anderson.

18 I did my papers on characteristics and
19 values of NCAA champions, 1956 to 1966, a ten year
20 span. On that paper I drew up certain things that I
21 thought were true of national champion wrestlers in
22 particular, that they were probably good leaders, and
23 in the study I found that a lot of them had gone
24 through military and were high ranking officers, a lot
25 of them were in the business sector, and they were very

1 successful there. They were men that liked the
2 challenge and they were not afraid to take risks. And
3 these things were all things that I thought I already
4 knew about.

5 But one thing that I had on that paper, I
6 wrote on there, what, if anything, wrestling had taught
7 you. And there's one response that I have not heard
8 yet. There was fighter pilot who was shot down, and he
9 and four other guys were taken prisoners and put in
10 solitary confinement individually in a small box. It
11 was very hot there. And he said he didn't know how
12 long they kept him there, but when they opened the
13 doors, he was the only one that came out. He said he
14 was the only one that survived.

15 He said while he was in there, he thought of
16 all the times he deprived himself of water and food and
17 the hard work ethics and that they weren't going to
18 break him.

19 It's hard to say exactly what wrestling has
20 done for so many hundreds of thousands of people. You
21 can call it bravery, you can call it courage. In
22 Japanese, Kiachu means spirit, the human spirit. And
23 whether it's a male or female, I think they want at
24 least to have the opportunity to wrestle if they want
25 to.

1 Thank you.

2 MR. LELAND: Thank you. Teresa Check
3 has a strong interest in education. Her mother was a
4 teacher and father was a professor. She is currently
5 the Director of Athletics at Central State University
6 in Columbus, Ohio. She's a graduate of that
7 institution. She stayed on there to coach basketball,
8 then went to Western Illinois as the head coach,
9 returned to her alma mater, where her teams played in
10 13 consecutive NAIA tournaments, the longest streak in
11 NAIA history, a great accomplishment.

12 She's won many honors; eight times coach of
13 the year in her region, and just inducted into the NAIA
14 Women's Basketball Hall of Fame. And during the last
15 nine years of her coaching tenure every student athlete
16 who performed for her graduated from college.

17 Teresa.

18 MS. TERESA CHECK: Thank you. Good
19 morning to the Commission. I just want you to know
20 it's certainly a privilege to talk with you this
21 morning, and I also commend you all on your patience
22 and especially your endurance.

23 As Ted said, I currently serve as the
24 Director of Athletics at Central State University in
25 Wilberforce, Ohio, and that's located in southwest Ohio

1 near Dayton.

2 We are a historically black university, with
3 an enrollment of approximately 1400, which we're
4 looking to increase after this year and after next
5 year.

6 I've held this position as Athletic Director
7 for seven years. We are an NAIA Division 1 institution
8 but currently in the process of investigating NCAA
9 membership.

10 We are also a state-assisted institution,
11 and I have the privilege of working for President John
12 W. Garland, who is committed to Title IX and its
13 effects.

14 Historically, black colleges have always
15 faced an uphill battle in meeting the goals of Title
16 IX. Getting African American females to participate in
17 athletics at HBCU is becoming a major task.

18 One set of statistics reports that less than
19 5 percent of all high school females and less than 10
20 percent of all college athletes are African American
21 females. The whys of this problem are many, and I will
22 speak to several of them later.

23 With most HBCU's facing extremely tight
24 budgets, the moneys that are being allocated for
25 athletics and especially women's athletics is usually

1 below what other universities with comparable programs
2 are spending.

3 In a recent study by the Chronicle of Higher
4 Education, the largest operating budget for an HBCU was
5 just over six million dollars. And obviously this is a
6 program with football.

7 The women's program received 34 percent of
8 the operating budget, with 42 percent of the total
9 athletes. The women's program also received 42 percent
10 of the scholarship monies. The female enrollment of
11 this university was 56 percent of the entire
12 enrollment.

13 Well, you're probably wondering well, how
14 are we doing at Central State? We have 55 percent
15 women, 45 percent men. Fortunately, of that number, 53
16 percent of our athletes are female and 47 percent of
17 our athletes are male. And obviously, no, we don't
18 have football yet, but we are in the process of
19 bringing our football program back.

20 I am attempting to lead that effort to bring
21 our football program back because you cannot
22 underestimate the importance football has on a black
23 college campus. It enhances enrollment, alumni giving,
24 the marching bands. So it's just vital to Central
25 State's survival that we bring football back. And

1 obviously when we bring football back, there are going
2 to be Title IX ramifications which we are preparing for
3 now.

4 Of the HBCU's reporting, only Hampton
5 University and Howard University offered over one
6 million dollars in scholarship monies to their female
7 athletes, most offered less than 300,000. One
8 institution reported only \$29,000 for scholarships for
9 their female athletes. This was only 28 percent of the
10 reported total scholarship budget.

11 With limited scholarships to offer, the
12 HBCU's, who at one time thrived because many black
13 athletes had no other choice for a college degree, are
14 losing the black athletes to other institutions with
15 more scholarship monies to offer. This is increasingly
16 true for potential student athletes whose parents are
17 professionals and do not qualify for financial aid
18 based on need.

19 Another problem facing HBCU's is what sports
20 do we offer? Many black student athletes have not been
21 exposed to many of the sports that their white
22 counterparts have, especially if they come from urban
23 high schools.

24 How many of our inner city high schools
25 offer the emerging sports such as rowing and crew, ice

1 hockey, rifle, or even field hockey? How ironic that
2 these are the sports that majority, which are your
3 white, schools are adding to meet the Title IX
4 requirements.

5 Most inner city high schools offer a core of
6 athletics, including football, volleyball, track,
7 basketball, baseball, and sometimes softball and
8 tennis. Golf has increased in popularity for males,
9 but still lags far behind for females.

10 In order to provide more opportunities for
11 female college athletes, Athletic Directors, we must
12 become creative and inventive. I cite the University
13 of Maryland-Eastern Shore because they recently started
14 a women's intercollegiate bowling program which has
15 proven very popular. We like to bowl, and we have a
16 vital and huge interest in bowling.

17 The University of Maryland-Eastern Shore in
18 some ways proves to be the exception to the rule as far
19 as HBCU's go. Their women make up 54 percent of their
20 athletes, they receive 52 percent of the scholarship
21 monies and comprise 58 percent of the entire student
22 body. However, the University of Maryland-Eastern
23 Shore does not sponsor football.

24 As a long-time coach and administrator, I've
25 always believed in the life lessons participation in

1 athletics can create. When I became a part of Central
2 State athletics, I realized that it is vital for our
3 women athletes not only to participate, but to excel.

4 It was not difficult to understand that our
5 young women would face numerous obstacles as they
6 pursued their career and life goals. We all know
7 athletics is a way to prepare, discipline and
8 strengthen themselves to face what we know is sometimes
9 a racist and sexist society.

10 Statistically the black female athlete ranks
11 last in representation and financial support in our
12 colleges and universities. This is precisely why I
13 believe in work to cultivate as many opportunities as
14 possible for our female student athletes and coaches.

15 At Central State University our operating
16 budgets and scholarships for basketball and track are
17 the same for both men and women. When golf and tennis
18 were introduced last year, they were both offered for
19 men and women with the same level of support.

20 One of the reasons why sports participation
21 for the African American females at Central State and
22 other HBCU's is so vital is because of the
23 opportunities that these women have to be leaders and
24 participate in the skill positions on our basketball
25 team such as point guard and the setter on the

1 volleyball team.

2 The national success of our women's
3 basketball team is proof that African American women
4 athletes can thrive and excel in outcome control
5 positions when allowed the chance.

6 Opportunities for these female student
7 athletes must continue to be enhanced and not
8 threatened by the weakening of Title IX.

9 Thank you.

10 MR. TED LELAND: We now have 15 minutes
11 for questions, so if you could --

12 MS. JULIE FOUDY: I have a question for
13 Gary. Thank you for coming today, and congratulations
14 on the new legislation that you talked about.

15 I have a question regarding that. Can you
16 tell me why first of all these guidelines are necessary
17 and maybe some of the history in the State of Georgia;
18 and secondly, if you think that many other states like
19 Georgia would find it necessary to enact further
20 guidelines, at the high school level I'm speaking
21 particularly.

22 MR. GARY PHILLIPS: I'm not sure of the
23 exact history. You would have to deal with the -- it
24 came through the initiatives of several women leaders
25 in our state's state legislature. Our Bill from this

1 state was pretty well-fashioned after what was passed
2 in Florida a couple of years ago.

3 In this state we deal in the public schools
4 with the ones -- and some of the private schools --
5 that are members in our organization. The school
6 populations range from as little as 125 students in a
7 school all the way to our largest school has over 4,000
8 students.

9 So in reality, there were probably some
10 places throughout the state where there was an interest
11 in women's athletics, but the size of the school or
12 some other factors, money, those kinds of things, kept
13 those activities from being enacted.

14 So some of this is about the amount of teams
15 and the kinds of sports that you offer. A fair amount
16 of the language of the law deals with budget
17 considerations, things like if you buy uniforms for the
18 baseball team on some type of rotation of every second
19 or third year, you should give the same consideration
20 to softball, as an example. So if you spend a lot of
21 money on your baseball field but you don't have a
22 softball field, you have to look to begin to equalize
23 those kinds of things.

24 I don't know if I gave you the exact answer
25 you're looking for. You have to pardon my excuse, but

1 at the time this came I was the Principal of a high
2 school of 2200 kids and I had my hands full with that,
3 and so I did not really -- and we did not have those
4 issues in my school, so the legislation really was not
5 something I watched that closely. And I was not a
6 member of the State Office obviously at that time.

7 MR. TED LELAND: Percy.

8 DR. PERCY BATES: Yes. This question I
9 have is for Grant. Grant, we heard some of your advice
10 already, but I guess I'm interested in having you talk
11 just a little bit more about what you and your
12 organization have talked about relative to how do we
13 solve some of the problems that I've heard you outline.
14 I mean, it's clear you said the organization supports
15 Title IX; at the same time, you're feeling sort of
16 pinched.

17 Could you talk a little bit more, I guess,
18 about what you think this Commission might do to
19 somehow provide an environment so that we can all live
20 in it and feel reasonably comfortable.

21 MR. GRANT TEAFF: It's a very difficult
22 question. If it were not, it would probably have been
23 solved years ago.

24 One of the things that has taken place is
25 that the oncoming of proportionality has placed a sort

1 of pall on every way to try to solve this issue. So
2 any time anything comes up or anybody has an idea, it
3 all falls back to, well, we have to live under the
4 proportionality guidelines.

5 By the way, I'm going to provide all of you
6 with quite a bit of information regarding some of the
7 history of what took place with Congress. And the
8 committee that I sat in on, the NCAA committee,
9 Dr. Bates, was one that attacked this issue in '92
10 /'93, and we were told at that time by the Office of
11 Civil Rights in the Chicago meeting when we met with
12 the Office of Civil Rights that they would use the
13 three-prong test in balance. And then shortly after
14 that, in '92, we were told by a member of our
15 committee, who I thought was a soothsayer at that time
16 because she evidently had information we didn't have,
17 that it would come down to proportionality. And that's
18 what it's come down to.

19 The interpretations have all been pushed
20 towards the concept of proportionality. I testified in
21 the Brown case, so I know the Judge, and I listened to
22 him as he made his decisions about this. But one of
23 the things that is very proven, and I think everybody
24 in here would agree with this, that for whatever
25 reason, females will not walk on, particularly in large

1 numbers. You might have an isolated case or so. They
2 will not do that.

3 And this concept that Brown had I thought
4 was a very good solution, and it was cut off at the
5 knees early on, that you could not provide
6 opportunities, increase the opportunities for females,
7 give them the same chance that we give youngsters, male
8 students, to come in and to walk on.

9 If you could do that, if you could increase
10 the opportunities at each one of these institutions to
11 increase the numbers instead of going out, for
12 instance, and creating a sport like crew in the State
13 of Texas where you have to drive 2,000 miles or 1,000
14 miles to have any competition, it doesn't make any
15 sense. Go ahead and create more opportunities for
16 females to walk on.

17 Now, granted, the end result is that right
18 now under this mentality, they will not do it. I am
19 the father of three daughters, and I asked them during
20 this process, I said, look, would you like to play
21 college sports? No, I want to play intramurals so I
22 can compete, so I can be involved and participate. I
23 don't want to go out and sit on the bench on some
24 sport. So the whole concept is participation.

25 I would think that if we could find a way to

1 create more opportunities, then that would alleviate
2 some of the problems that we have on cutting out male
3 opportunities that are so important.

4 A great presentation this morning about the
5 importance of participation. I wouldn't be sitting
6 here before you today, Dr. Bates, had I not had the
7 opportunity as a walk-on. And it's not right to deny
8 people in this country the opportunity to participate
9 in a sport.

10 And the reason you're here is that there is
11 an outcry and there is a concern nationwide. Yes, we
12 must do things for our female athletes, and we're doing
13 that, it's been great, we cannot deny that, but we
14 cannot go on denying male opportunities at the expense
15 of female opportunities. There's something askew and
16 wrong with this system.

17 And the answers are not easy, but I believe
18 creating more opportunities would really suffice in
19 that. People have asked me, should we eliminate
20 football from the camp? And I don't think so, but
21 football has to have a lot of people to participate.

22 And there are statistics that I'll pass to
23 the Committee that tells you why, how it's broken down,
24 the number that participate and so forth and so on.

25 But it's a real problem now, and I'm so

1 grateful that this Committee is at least looking at it.

2 MR. TED LELAND: I've got a bunch of
3 questions back up here, so Gene, you were next.

4 MR. GENE DeFILIPPO: Coach Teaff, this
5 question is for you. In your presentation you
6 mentioned football numbers, 85 scholarships but 20
7 football players being allowed to come out for the team
8 at the start of the season.

9 You know, how do the present day numbers
10 nationwide stack up with numbers, say, when you went to
11 Baylor in the early 1970s?

12 MR. GRANT TEAFF: The numbers in the
13 early '70s were huge. There were no limitations to
14 start out with for recruiting. The larger schools
15 would sometimes bring in 150 to 175. I remember in
16 1973 we were playing Pittsburgh and they signed 170
17 players that year. 170 players. And so those numbers
18 have been huge. And over a period of time, for cost
19 containment and other reasons as well and certainly
20 within the gender equity issues, those numbers have
21 come down.

22 You'll remember there was a time when there
23 was 120 scholarships, and then those scholarships were
24 cut to 85. And one important statistic that you should
25 all know is that that 85 on the Division 1-A schools,

1 of which there are 115 or 117, has always been a
2 target.

3 Really and truly, for a 19 year period we've
4 done studies on attrition, and there are not 85
5 scholarships, there's 79 average nationwide because of
6 attrition. And so when you get that and then you get
7 two or three injuries and you get a youngster or two
8 that worked in the area of kicking or the quarterbacks
9 where they are not participating in overall, your
10 numbers are the lowest that they can go to have the
11 level of competition that you now have for the
12 so-called revenue sports.

13 And a point was made earlier today of the
14 importance of having football at an institution, what
15 it does in its totality, and that's so important.

16 But the numbers, Gene, have dramatically
17 dropped in Division 1-A. All other sports are a
18 limited number of scholarships, all other football in
19 all other divisions, a limited number of scholarships
20 down to total walk-ons. The high majority of the
21 football playing institutions in America have walk-on
22 students.

23 DR. RITA SIMON: This question is to
24 Teresa Check. I think I understood you to say that
25 generally only about 10 percent of African American

1 women have expressed interest in athletics. Is that
2 right, Teresa?

3 MS. TERESA CHECK: That's right.

4 DR. RITA SIMON: Okay. You talked
5 about your university and the percentage of women are
6 about 55 percent, and you have over 50 percent or close
7 to 50 percent of them participating in athletics.

8 MS. TERESA CHECK: That's correct.

9 DR. RITA SIMON: Okay. Did you ever
10 take an independent measure of how many of the overall
11 African American women at your university are
12 interested in sports? I mean, suppose it's only 10
13 percent are interested in sports at your university,
14 yet about 50 percent participate.

15 What about the interest of African American
16 men in sports and what percent of them participate, do
17 you see any problems with that?

18 MS. TERESA CHECK: I think if I
19 understand your question correctly, there could be;
20 however, we have not really surveyed our student body
21 to that extent because -- well, we are relatively small
22 -- so these student athletes or the students know how
23 to begin sports and how to indicate interest in that
24 sport as far as starting clubs and so forth.

25 But to answer your question, no, we have not

1 taken recently, to my knowledge, any surveys.

2 DR. RITA SIMON: But would there be any
3 reason to believe that your university is not
4 representative of the general feeling among African
5 American women and their interest in sports, that it
6 would only be a small proportion, 10 percent of them,
7 when they came to your university had an interest in
8 sports?

9 MS. TERESA CHECK: I think they come to
10 our university because they are interested and they
11 want to participate.

12 DR. RITA SIMON: Okay.

13 MR. TED LELAND: Okay, we have Donna,
14 Graham, and Debbie.

15 MS. DONNA de VARONA: Is it all right
16 to ask two questions?

17 MR. TED LELAND: Certainly.

18 MS. DONNA de VARONA: Teresa, you are
19 interested in developing a football program and you
20 said you had to prepare so you could comply with Title
21 IX regulations. Are you indeed going to field 85
22 players, and do you see it as a problem in compliance
23 with Title IX? And how are you going to comply with
24 Title IX as it relates to your student population?

25 MS. TERESA CHECK: I see it as a

1 challenge. Central State University desperately needs
2 our football program back. We will probably initially
3 not have 85 young men playing. In fact, we're going to
4 bring it back as a non-scholarshipped sport initially.

5 How we are handling that situation as far as
6 Title IX compliance, we are looking to fully fund our
7 track and field programs. We have a hugely successful
8 track and field program, so we're looking to fully fund
9 our women's track and field program. We are looking to
10 add sports for our women, such as softball. We're
11 going to bring back softball and restore that.

12 We have also explored cheerleading, because,
13 you know, I heard yesterday the possibility of
14 cheerleading being considered in intercollegiate
15 sports. We do offer aid to our young men and women
16 that participate on our cheerleading squads.

17 We also are looking to add a bowling team
18 and then from there, possibly soccer.

19 MS. DONNA de VARONA: Why did the
20 school drop football in the past?

21 MS. TERESA CHECK: I am just so sorry
22 you asked that because it brings up kind of an
23 embarrassing part of our history at Central State.

24 In 1996 Central State University underwent
25 huge financial difficulties and also some serious

1 eligibility problems and issues with our football and
2 our baseball program.

3 At that time football had a 2.5 million
4 dollar budget within a school that's entire budget was
5 maybe 28 million dollars. Obviously that was way, way
6 out of proportion with the mission of our institution.

7 The State Assembly legislated that since
8 football and baseball were under sanctions by the NAIA,
9 those sports would be dropped, and they were dropped.

10 MS. DONNA de VARONA: I see. Thank
11 you.

12 My other question is directed at Grant. I
13 think we feel the same way. I think those women in
14 sport that have benefitted from Title IX have always
15 had to battle in the past NCAA lobbies. I now feel
16 beleaguered by having blame put on Title IX, to the
17 demise of men's minor sports. At the same token, I can
18 see why the football establishment doesn't want to be
19 blamed for allocating spots to football instead of
20 men's minor sports. And maybe that's a loaded
21 question.

22 And also, we look at the expenditures in
23 football. We look at the arms' race and the fact that
24 many football programs feel they have to build indoor
25 arenas to attract scholarship athletes, that they have

1 to pay their coaches two million dollars, and in the
2 same benefit, they cut men's minor sports and they
3 blame proportionality.

4 Can you give me a solution to this problem,
5 because I think all of us in this room are passionate
6 about athletes. We don't want to see wrestlers up here
7 crying and feeling bad about the fact that they never
8 got to complete their competitive years, that their
9 programs were ripped away from them at the last minute
10 with no explanation and no communication.

11 So what is the solution?

12 MR. GRANT TEAFF: First of all, you
13 can't paint football with one brush stroke that every
14 coach out there is making two million dollars and every
15 program has excessive budgets. There are 700 of those
16 schools. Here's a great example of an institution that
17 needs football. Is there an arms' race? Absolutely on
18 the Division 1-A level. Is it a problem? Absolutely.
19 I think you could talk to any President, any Athletic
20 Director, we have concerns about that, but that in its
21 face has very little to do with what we're talking
22 about here, the elimination of opportunities, because
23 if you'll go back and check, those institutions that
24 are spending that money on football are also spending
25 that money in women's sports. And we have some of the

1 most outstanding women athletic programs in those
2 particular schools, and yet many of them are not under
3 compliance as to yet. And I could name you a half a
4 dozen of them that have great programs, expended great
5 money, and not under compliance.

6 So the issue is not whether a few Division
7 1-A schools are spending the money that could be done
8 for other things. They usually do that because there's
9 a real reason to do that, and people that go all the
10 way to the upper echelons are making those decisions.
11 What the real issue is is can we find a way to allow
12 every young person in America that wants to participate
13 to participate? That's our job. That's what we should
14 do. And any person that is denied that, that's wrong.

15 And, Dr. Bates, with this opportunity,
16 there's one other thing that you asked about solutions,
17 and I have looked at this very, very closely, and the
18 first time I mentioned it was in the early '90s, and I
19 got shot down big time, but I think it's a different
20 deal now, and that is cheerleading.

21 The best athletes I've seen on a campus in
22 many instances are those cheerleaders that are being
23 scholarshipped, and for the life of me, I can't
24 understand why in a competitive world they do not
25 count. And that's another area where we could balance

1 this up a bit.

2 MR. GRAHAM SPANIER: Grant, to pursue
3 your discussion of activities, I'm a fairly numbers
4 oriented person. You've mentioned two areas where
5 football participation is restricted. One is really an
6 NCAA rule I think about the number of walk-on
7 opportunities, but that of course is influenced in part
8 by gender equity concerns. The second is what we've
9 euphemistically heard over the last day and a half,
10 roster management.

11 Do you have some estimate of on these 700
12 football teams how many men would walk on at their own
13 expense, so to speak, to these teams? I mean,
14 recognizing that we are not going to increase the
15 scholarships, we're not going to up them from 85, that
16 we're just talking about walk-ons, what general
17 estimate would you give as to how many men would like
18 to participate but are not being allowed to now for
19 these two reasons?

20 MR. GRANT TEAFF: Thank you. One of
21 the statistics that I know personally about is when I
22 coached at Baylor University, scholarship limits were
23 the same, 85 now, and we averaged 60 walk-ons. They
24 are now cut back to 20 for pre season participation,
25 which, as we all know, is an NCAA rule.

1 But I would imagine that the average
2 nationwide for all levels of school, I know we just
3 helped put in a Division 3 new program, and they had
4 300 male students enrolled specifically because of
5 football, because they were coming to try out. They
6 wanted to be there because football was played at this
7 small institution and it hadn't been in that past.

8 So that number of 300 would skew a little
9 bit the statistics, but I would say that you could
10 count on easily 40 to 50 each year walking on, in some
11 instances more because some coaches really encouraged
12 walk-ons and give them scholarships if they stay long
13 and so forth. But the average would be about 40 to 50.

14 MR. GRAHAM SPANIER: Just to follow up,
15 if I might, because what we've heard about wrestling in
16 the last day and a half is really focused on lost
17 programs and scholarship opportunities. There are
18 still many active wrestling programs.

19 Do you have a similar estimate in wrestling,
20 let's just say looking at the programs that exist?
21 There's also, of course, roster management going on in
22 wrestling. How many wrestlers are we turning away as
23 walk-ons? I know you're in the Junior College program,
24 so the relevancy of scholarships may be different
25 compared to what we would see at Division 1-A. I know

1 you're broadly knowledgeable, and I just wanted to give
2 you the opportunity to comment as well.

3 MR. RON MIRIKITANI: I know that on the
4 Division 1 level there are 9.9 scholarships offered in
5 wrestling, so that's not even one per weight class. So
6 there are a lot of young men who want the opportunity
7 to compete as a walk-on or take partial or small
8 scholarships.

9 I had five scholarships in my school, so I
10 had to try and divide those up. I had a lot of
11 walk-ons. I'd say I had at my school right around 15
12 maybe. It's hard to say because I have my first
13 meeting today at 4:00. I don't know what numbers I'll
14 have. But I'll probably have about 15 or 20 that will
15 walk on and compete.

16 MR. GRAHAM SPANIER: Thank you.

17 DR. DEBORAH YOW: A couple of comments
18 and then a couple of questions, coach, I think, coming
19 your way. One, I think it's important that we all
20 understand that someone is going to be denied
21 opportunities. There is a finite amount of money for
22 Presidents and Athletic Directors to work with. So
23 with or without proportionality, that's going to
24 happen, just going to happen.

25 I do feel as a female athlete since the age

1 of 10 that there might be a little bit of social
2 engineering in this regard. I'm not so sure that
3 proportionality is the best way, although I don't have
4 the answer either, in the sense that there doesn't seem
5 to be a logical flow for me, an association between the
6 undergraduate female population and the number of
7 female student athletes that we should have.

8 I do know that I personally think they
9 should be taking advantage of it because of what it did
10 in my life. But again, that might be a bit of social
11 engineering on my side just because I can't force other
12 people to value what I value.

13 That being said, we haven't yet used the
14 term I think that's important that we use, and I'm
15 going to just focus for a minute on 1-A. We are a
16 quasi business. We are a business in some form or
17 fashion. I personally don't trust in some way the
18 numbers that are continually espoused related to the
19 revenues versus expenditures for football and
20 basketball. I believe that those counted against those
21 institutions, and their revenue numbers might be things
22 like student fees. And the student fee is not in any
23 way supplementing the budget. It's a trade-off of free
24 seats for that opportunity. I'm not sure about whether
25 or not that's included, but I tend to believe that it

1 is.

2 For you, let's concentrate on football and
3 basketball for just a minute because there's something
4 else. Not only have we not addressed the concept that
5 we're a business, a quasi business, which we are, it is
6 the revenue generated from football and basketball that
7 makes all the other sports possible. That's a fact, at
8 least it is in my world, and I don't think that
9 Maryland is that atypical.

10 We have yet to talk about what is coming
11 next and how it would be related to Title IX, and that
12 is what's commonly known as pay for play. We used to
13 call it laundry money in the '60s. When my brother
14 played football for Clemson, he got 15 dollars a month.
15 It would be a little bit more than 15 this time around.
16 And as far as I can tell, it would be applicable to
17 women as well, so that if we provided that money to 85
18 scholarship football athletes and 13 for the men, then
19 we're going to have to turn around and add 98 for the
20 women. And I do believe that will happen. I don't
21 know exactly when or how, because while we're here
22 talking about keeping the wrestling teams, we need to
23 all understand we have a movement underway that's
24 gaining steam with both football and basketball
25 athletes to get more because they, quote, bring in all

1 this revenue to the institutions.

2 So we've got all that. Those people aren't
3 represented anywhere in this room, but that's very much
4 a part of the lives and presence of AD's.

5 How do you see that playing out in a pay for
6 play situation, men to women, any of you? And the
7 second question, Grant, is specifically for you, and
8 that is -- this is a little delicate question for you.
9 You know, I'm part of the problem if you want to
10 consider it a problem, but basically, our football
11 coach and our men's basketball coach earn a seven
12 figure income, and I helped put them there. And the
13 reason is Maryland is not going to get disadvantaged.
14 If we don't win, it won't be because we didn't keep the
15 best coaches that we can find, but the fact of the
16 matter is it is right now totally market driven just
17 like a business. So we're now paying a lot of money.
18 And please don't anyone in the media tell Ralph that I
19 -- please don't misinterpret this. I love Coach
20 Region. I'm happy to pay him that amount of money.

21 What is the answer to this, because it's
22 part of the problem? It is part of the issue of where
23 money goes. People say how can you make that much
24 money and still have a problem? Well, that's one piece
25 of it. There are other factors, but pay for play and

1 how that would play out in Title IX, what you think.

2 And also, the AFCA position as related to football
3 coaches in higher education and what is reasonable for
4 compensation.

5 MR. GRANT TEAFF: Do I have three hours
6 to answer that question? Thank you, Debbie.

7 Well, first of all, let me say that based on
8 just what you said about the coaches' salary, I left
9 coaching about eight years too soon; however, you're
10 100 percent right. It is market driven, there's no
11 question about it. The dollars are enormous. The
12 institutions are driven by a desire to create more
13 revenue, and part of that is driven by gender equity
14 issues, there's no question about that, to be able to
15 try to fund other sports as well as their own.

16 Are the budgets in Division 1-A football way
17 too high? I would think so. I think that those are
18 individual institutional decisions. I serve on a
19 committee that's now defunct, the Football Oversight
20 Committee, and there was a lot of discussion in that by
21 the Presidents about the coaches' salary, and I asked a
22 very simple question, who on your campus makes that
23 determination? And they all said, of course the
24 President has the final say on salaries as well as does
25 the Athletic Director.

1 I think it's an issue that has to be solved
2 by institutions. It cannot be solved by coaches.
3 Coaches that I know of have never banged on the door
4 and said, you got to pay me two million dollars. I've
5 never seen that happen. Maybe that happens, but it is
6 market driven. Until the market changes, it's going to
7 go upward. And am I concerned about it? Absolutely.
8 I'm concerned about the disparity between the head
9 coach's salary and the assistant coach's salary. I
10 think we got a real problem there. And it may not rear
11 its ugly head now, but some day its going to rear its
12 ugly head.

13 So what is the competition? The competition
14 for coaches in that level is the professional ranks
15 where they will pay Steve Spurrier five million
16 dollars, which is an exorbitant fee right now based on
17 what the others make, but that is what you're fighting
18 against. So the ones that are going to go to the pro
19 level are probably fewer than you think.

20 So one of the things that institutions have
21 to do is you have to sit down and say, where do we stop
22 with it?

23 Now, on the student athlete thing, I think
24 we all have a concern about that. There's a movement
25 afront, although not gaining any force at this time,

1 almost like a union by student athletes. We are still
2 in the business of educating young people. We have
3 done a remarkably poor job in education on telling and
4 teaching young people that are on scholarship the value
5 of that education. They disregard that because of all
6 of the big money that's in the pro ranks. We got to do
7 a better job in education of showing them right down
8 the line if you become an educated person and walk out
9 here with a degree, your earning power over the next 40
10 years is thus. So when students understand that, they
11 don't really seem to have a problem with that issue.

12 I disagree with what you think, Debbie, on
13 the NCAA giving 50 dollars or 100 dollars to student
14 athletes. I don't think that's going to happen. You
15 may have more insight than I do, but I don't think
16 that's going to happen in a long time.

17 Thank you.

18 MR. TED LELAND: Okay. Thank you for
19 our panelists, for our presenters. We will now take a
20 15 minute break, and I think we should be back at
21 11:40.

22 (Short recess).

23 MR. TED LELAND: Welcome all of you to
24 the public comment portion of this meeting. What we
25 will do now is go through the list that we have been

1 given from the sign-up desk for people who signed up to
2 speak and have confirmed their desire to speak. We
3 will go through that, and we'll invite you to come sit
4 in these chairs up here near the front in groups of
5 four. Then we will ask each person to step to one of
6 the stand-up microphones here and you will be given
7 five minutes to talk.

8 At the end of four minutes of that time, one
9 of us, Cynthia or myself, will say, one minute left.
10 With 30 seconds to go, our little light goes on here,
11 and in five minutes into your time, the microphone goes
12 off. So people learned yesterday to talk very fast.
13 I'm just kidding.

14 We're very interested in what you have to
15 say, but you need to move through your comments. We're
16 not doing this because we're in a hurry to get out of
17 here, we just have a lot of people who want to speak
18 and we want to be absolutely fair so that we can make
19 sure that every point of view is expressed relative to
20 the people who are willing to step to the microphone.

21 So Cynthia will name the first four.

22 MS. CYNTHIA COOPER: And I just want to
23 make sure that you guys have already signed up and
24 you're on my list. You don't know that? If you
25 haven't, go to the table up front.

1 John Bardis, Laura Lester, Nathan Simmons,
2 and David Wagner, if you could make your way up front.
3 And then we will start with John Bardis.

4 MR. JOHN BARDIS: Thank you. First of
5 all, I want to thank the Commission for allowing us to
6 have the opportunity to speak. I was a collegiate
7 wrestler. My wife was a collegiate golfer. We're both
8 D-1 athletes and had a tremendous experience that
9 really gave us an opportunity in life that was I
10 thought a head start.

11 Today I'm a business man, and I sponsor
12 Olympic level athletes, as well on the side, I own a
13 three sheet ice rink here in Atlanta, Georgia. And
14 today we have over 2,000 kids playing out of that
15 program.

16 We have sent seven teams to the National USA
17 Ice Hockey Championship. Along the way we have sent
18 twelve kids to college on scholarships, including this
19 year our first woman to Cornell University.

20 What I learned along the way in sponsoring
21 athletes is that particularly for minor sports we're
22 having a substantial amount of trouble raising money
23 and getting the universities to accept it from private
24 enterprise, because for every dollar we do it for a
25 minor sport for a male, one under the proportionality

1 rule is required to be raised for females.

2 Let me first of all say that I do not want
3 to see one dollar removed from women's athletics, not
4 one. I serve on the Board of USA Wrestling. I've seen
5 the benefit both for men and women in sport, and
6 particularly through the experiences of my wife and
7 young women who I sponsor today in ice hockey.

8 But in looking at a very specific issue
9 around private enterprise, and I have been involved in
10 building companies and raising capital, we are highly
11 restricted today in utilizing that capital to fund
12 minor sports because we're essentially taxed one full
13 dollar for every dollar that we choose to put forward
14 to a minor sport athlete or to a minor sport program.
15 And I think this is an issue that I would like to ask
16 the Commission to address. And I think it's a very
17 substantial opportunity for us in the business
18 community to help both men and women further their
19 education through sport by raising private monies.

20 We really haven't been able to do so in the
21 minor sport area. And I've seen certainly boosters be
22 very, very effective in helping major sports at the
23 collegiate level grow their funds so that they can hire
24 coaches and be competitive in a free market environment
25 where coaches are demanding higher salaries. So I

1 would just raise this point to you because I think it's
2 something that for those of us who have had the
3 opportunity to raise capital in the private enterprise
4 sector, to be able to reapply that capital for minor
5 sports.

6 And again, I say this one more time, I don't
7 want to see one dollar leave women's programs, but just
8 if you could untie our hands a bit in the private
9 enterprise sector to help minor sports grow through the
10 application of private funding.

11 Thank you.

12 MS. CYNTHIA COOPER: Thank you. Laura
13 Lester. And when you come up to the microphone, could
14 you repeat your name for the transcriber. Thank you.

15 MS. LAURA LESTER I'm Laura Lester.
16 I'm not an athlete, I'm not a coach, I'm not a parent
17 of athletes, I am a policy analyst. But I need to say
18 in hopes that it will gain me some positive sense of my
19 presence here that I never met a sport I didn't like.

20 I have information from having performed in
21 the last 15 months a total of six workshops helping
22 small school systems in Georgia implement the new
23 equity and sports law here. And because of that new
24 information, I think it would be of benefit to the
25 Commission to share some of it with you at this time.

1 The State of Georgia is particularly perhaps
2 uniquely placed to give substantive, if not downright
3 definitive, information in the coming years to the
4 question that lies at the heart of the present inquiry,
5 Title IX, is scrutiny sufficient or will compliance
6 fade if enforcement wanes?

7 In myth and legend, at least Georgia is
8 where cotton used to be king but now football ranks,
9 yet in 2000 the Georgia legislature, seen as the
10 quintessential bastion of Old South conservative
11 elements, passed a Sports and Equity Law that in its
12 principles enshrines Title IX and requires each of 179
13 school systems to file a yearly report on gender equity
14 in sports.

15 This report, due on August 30th of each
16 year, collects information on participation rates by
17 gender and it administers an intrasurvey on adding
18 other sports. Schools are required to certify that
19 opportunity efforts are equitable and, most unusually,
20 and dramatically, to list the funds expended to support
21 each sport at every school and by each system.

22 This financial accounting takes Georgia into
23 a realm way past where Title IX can go. Even more
24 astonishing, school systems through their local school
25 Boards must require every Booster club to quantify the

1 actual support into a dollar amount and receive
2 explicit permission from the local Board to donate time
3 and money to their chosen sport.

4 To the question, is scrutiny alone
5 sufficient, the law in Georgia demands that a system
6 coordinator be appointed to receive, investigate and
7 respond to complaints. The law in Georgia sets forth a
8 public process to decide on whether there is sufficient
9 interest to add a new sport.

10 Most school systems in Georgia are small and
11 have one or two high schools. For two years,
12 consultant act, that's me, has offered compliance
13 workshops for this really very difficult to document
14 new law, and last spring we asked systems through their
15 Athletic Directors or their Principals or their
16 Superintendents, to fill out a survey completely
17 voluntary, completely unofficial, on sports equity
18 issues.

19 85 of 179 school systems filled out the form
20 and reported. That's 47 percent. It is essentially a
21 compliance assurance form asking did the system or the
22 school review the details of the opportunity they
23 provided for their own planning purposes? This
24 preliminary and incomplete information from the first
25 year of a new law shows very high compliance.

1 Having personally conducted these, I want to
2 share the information from this with this Commission.
3 35 percent reported that a request to add a new sport
4 had been received. 14 percent reported that the
5 necessary signatures to have an information meeting
6 were received. Of the 85 surveys received, total new
7 sports added were 44. That's a 51 percent increase.
8 The new sports were 82 percent of this.

9 In Georgia there is a strong, strong change
10 in the works. It registers at 40 percent. Change
11 rates towards compliance --

12 MR. TED LELAND: Time.

13 MS. CYNTHIA COOPER: Thank you. Nathan
14 Simmons. I just want to remind everyone to turn their
15 cell phones off.

16 MR. NATHAN SIMMONS: Hi, I'm Nathan
17 Simmons. I'm a former gymnast at the University of
18 Memphis, Tennessee, and we dropped our team. Our team
19 was dropped in 1983. One day the Administrator came in
20 our gym and told us our sports would not be available
21 anymore in two weeks, so we lost our team. That was
22 pretty heartbreaking for us.

23 But now I'm an attorney here in Atlanta, and
24 I coach guys' gymnastics here at the Atlanta School of
25 Gymnastics. We had to reduce a lot of the guys in the

1 gym, a couple of Olympiads, a World Championship team
2 of competitors, quite a few National Champions, and our
3 guys are pretty dedicated to the sport.

4 We're talking about interest in the sport.
5 My guys, they work out six days a week, three and a
6 half hours a day, and a lot of the kids, they drive to
7 our gym to work out and train.

8 On our team we have 20 guys on the team and
9 we have about 85 guys that are fete compete. The
10 reason we have those guys compete in our class programs
11 is because we have very few instructors out there that
12 are able to teach.

13 Sports did a lot of good for me, and my guys
14 are very dedicated to the sport. They work hard and
15 they have an interest in the sport already. A lot of
16 my guys went on to the Nationals last year, and at
17 Nationals there was a lot of good guys competing, close
18 to 40 guys competing in Nationals. These are guys that
19 are at top levels in the sport. There's level seven up
20 to level one, and the guys competing in Nationals were
21 level three and up. And, you know, these guys, they
22 work hard and they are committing themselves to the
23 sport.

24 My guys in my gym, they have to have a B
25 average to compete or train, otherwise they are not

1 allowed to train. You know, I'll tell you this sport
2 has had a strong impact on me because about two years
3 ago I got mugged at gun point by some young guys in the
4 sport, and it had a strong impact on me because it made
5 me realize that these guys, they need something, some
6 direction, some focus to keep them going.

7 And a lot of the guys, they have been in
8 sports since they were 4 years old. I've basically
9 raised a lot of those guys since then, and when they
10 turn 18, they have nowhere to go. I know when they
11 dropped our team, I worked out six days a week, many
12 hours, and when that was taken away from me, I was just
13 lost. It was almost like a big part of life was taken
14 away from me and I didn't know where to go.

15 I think young guys, young men, they need
16 some direction, something to keep them focused, and I
17 think it's our responsibility to make sure they have
18 that. And that's all I want to say. Thank you.

19 MS. CYNTHIA COOPER: Thank you. David
20 Wagner.

21 MR. DAVID WAGNER: Thank you. I would
22 like to begin by saying that I did not sleep in a
23 Holiday Inn Express last night.

24 MS. CYNTHIA COOPER: We will forgive
25 you.

1 MR. DAVID WAGNER: My experience comes
2 from 30 years working in intercollegiate athletics with
3 Title IX. I was on the first Title IX committee at
4 Florida State back in the early '70s. I was at
5 Vanderbilt University when the regulations came out in
6 '79, and we had two lawsuits pending at that time.

7 I was the Athletic Director at Georgia
8 Southern University for 15 years and made it through
9 the 15 years without a complaint, and I've taught sport
10 law for the last six years and have studied Title IX
11 with the legal aspects.

12 Permit me to address two of the charges to
13 the Commission. First, is there adequate Title IX
14 compliance that enables colleges and school districts
15 to know what is expected of them and to plan for an
16 athletic program that effectively meets the needs and
17 interest of the students?

18 Based upon my experience with Title IX in
19 intercollegiate athletics, that answer is yes. The
20 NCAA has taken the leadership and provided information
21 that is timely and is effective. But as I look at
22 interscholastic athletes and my experience there, that
23 answer is a resounding no.

24 The Title IX investigators' manual has 165
25 pages, the 1996 clarification of the three-part test

1 has 9 pages. These 174 pages are the sum total of
2 material available from the Federal Government to the
3 secondary schools.

4 Other materials that are available to the
5 secondary school Administrator come from advocacy
6 groups who tend to promote an extreme position of state
7 governments using the same detailed information found
8 in the investigators' manual.

9 There is no practical information available
10 to the secondary school Administrator concerning Title
11 IX's application to interscholastic athletics. In a
12 question and answer portion of the Secretary's
13 Commission on the Opportunity in Athletics' web page,
14 on page 4 the following question is asked, does Title
15 IX apply to high schools as well? The answer is yes.

16 And then it goes on to say, although any
17 proposed revisions will be designated for
18 intercollegiate athletics, their general principles may
19 apply, as appropriate, to club sports, intramural
20 sports, and interscholastic athletics.

21 Interscholastic athletics is a foundation to
22 our intercollegiate program and to most of our Olympic
23 athletes. Anyone that would classify intercollegiate
24 athletics along with intramurals and club sports that
25 are offered to school systems or to attempt to compare

1 the operations in any way with a university national
2 scope, it just doesn't seem logical.

3 The Title IX federal regulations were
4 designed to meet the needs of our elite colleges and
5 universities, universities with national service areas.
6 Secondary schools serve interests that are much less
7 diverse than national service areas.

8 To apply national standards to a local
9 school district just isn't very applicable. There are
10 18,000 secondary schools and six million seven hundred
11 and five thousand plus student athletes involved in
12 interscholastic athletics, and it is obvious that not
13 much thought has been given to the application of Title
14 IX to the secondary schools.

15 Because the information available to the
16 secondary schools is limited and difficult to access,
17 the secondary schools administrations' reaction to the
18 concerns are either well, we haven't been sued yet so
19 we must be right or give them whatever they want, just
20 don't get sued. They either overreact or underreact.

21 Title IX's application to the secondary
22 schools is unique, and this must be recognized, and a
23 plan must be developed to reduce regulations to only
24 those that are practically applicable to the secondary
25 schools and develop an in-service program for the

1 Office of Civil Rights staff and the secondary school
2 Administrators and athletics.

3 We have prepared with the help of Charles
4 Webb, from Bulloch County, and Lamar Daniels, who works
5 as a consultant, we prepared a manual that we have a
6 pilot study going on in about 50 schools in Georgia now
7 that takes a practical approach to informing the school
8 Administrators as to what they need to do to stay in
9 compliance with Title IX. We're also following that up
10 with a manual on Booster organizations and master
11 planning for school facilities.

12 The standard government response is that
13 whatever is good for everyone must be good for the
14 school system too. The standard response is in our
15 professional opinion, if it's not equal, you must be
16 out of compliance.

17 This brings me to the second charge of the
18 Commission that I wish to address, are the Title IX
19 standards for assessing equal opportunity in athletics
20 working to promote opportunities for male and female
21 athletes?

22 Secondary school programs are funded through
23 community resources. In the State of Georgia general
24 tax funds cannot be used for direct support of
25 intercollegiate athletics. Direct support for

1 athletics must come from paid receipts, Booster funds,
2 parent support, and student athletic fundraising
3 activities.

4 The mark of an excellent sports program
5 comes from direct support by the student athletes,
6 parents, coaches and Boosters. If a boy's team has
7 exceptional leadership --

8 MS. CYNTHIA COOPER: I'm sorry.

9 MR. DAVID WAGNER: Is that five
10 minutes?

11 MS. CYNTHIA COOPER: Yes, that's five
12 minutes.

13 MR. TED LELAND: The next four are Kim
14 Egan, they can move to the front, Bill Bradley, Kisha
15 Ford, and Claudia Woody. And we'll start with Kim
16 Egan, please.

17 MS. KIM EGAN: Good morning. My name
18 is Kim Egan and I'm here from Florence, Kentucky, about
19 500 miles away. I am not a legal, educational or Civil
20 Rights expert, I am just a mom of two wonderful sons
21 and equally wonderful daughter.

22 I am also a Fellow of the Kentucky
23 Commonwealth Institute of Parental Leadership, a member
24 of Lieutenant Governor Steve Henry's task force on
25 Child Obesity and Fitness, and the State Membership

1 Chairman for the Kentucky Congress of Parents and
2 Teachers, more commonly known as the PTA. I also have
3 MS, and I'm having a bad time at the moment.

4 I am not here, though, speaking on behalf of
5 any of those organizations that their missions are
6 closely related to the importance of Title IX. I am
7 here solely expressing my own experiences with Title IX
8 and possible solutions and how they apply on the
9 secondary and elementary school levels.

10 Approximately three years ago I was charged
11 in becoming a reluctant but determined activist and
12 eventually a successful lead Title IX plaintiff in a
13 class action lawsuit. After over a year of asking and
14 pleading and begging with a secondary school, we were
15 left with the only option, to file a lawsuit to obtain
16 compliance.

17 I also want it known that we refused to ask
18 for any damages as there is no price for anyone's
19 self-esteem and self-confidence. It is something money
20 simply can't buy. We just wanted them to do the right
21 thing, and we put up our own money, \$25,000 of it, to
22 back our convictions, and we could have lost it all.

23 If so, we rationalized that we would have
24 taught all three of our children a valuable, though
25 expensive, lesson, and in the end, the school had to

1 comply, reimburse our \$25,000 in costs, pay \$210,000 in
2 class legal fees plus nearly an equal amount for their
3 own defense attorney and expert fees.

4 I am proud to say a million dollar softball
5 complex is now being constructed and at the latest
6 count it is number twelve being built in Kentucky as a
7 result of the lawsuit.

8 You all have a most difficult task before
9 you, but the solution does not lie in changing any
10 component of Title IX law. Title IX standards for
11 assessing equal opportunity in athletics are well
12 formed. Discrimination is just the symptom of the
13 larger disease. The disease is three-pronged, and
14 though difficult to be cured, it must be.

15 First is football. Tradition has had it and
16 it still continues that basically football thinks it is
17 superior to all other sports, male and female alike.
18 That is the reason for men's sports being cut and
19 female sports being treated like they are second class
20 citizens. I am neither an anti football nor anti male
21 athlete. On the contrary, as I stated previously, I
22 have two sons, both athletic, one even plays football.

23 The first and most important step in
24 stopping this is to just open our eyes to the
25 day-to-day activities going on around us and consider

1 what message is being relayed to our youth. Often it
2 is the unjust behavior right under our nose that is the
3 hardest to identify.

4 It's easy to get used to the way things have
5 always been done, plus subtle discriminatory practices
6 may seem almost natural. For instance, school pep
7 rallies, parades, pre game meals, cheerleaders serving
8 doughnuts and juice on game day to football players is
9 just a time-honored tradition. It is, but is it also a
10 tradition instead of being a boys deserve the message
11 of second class citizenship and discrimination to all
12 the girls, one that couldn't and shouldn't be changed?

13 So while colleges and universities have an
14 overwhelming number of boys walking on to play
15 football, the pool of skilled female players for any
16 sport is limited. That is why the build it and they
17 will come perception only applies to female skill
18 building and provide real opportunities with quality
19 benefits has begun in the elementary school and
20 continues into secondary schools.

21 Most school Administrators have the belief
22 that it is merely enough just to offer an opportunity,
23 that the quality of that opportunity is not of
24 significance. If we were to accept that rationale that
25 the details aren't important, we would also have to

1 infer that the simple fact that you're on a bus is all
2 that is required and that the seat you are permitted or
3 not permitted to sit in makes no difference at all.

4 Maybe just providing the opportunity of
5 building it and they will come on the complete
6 collegiate levels, hoping opportunities and
7 participation will trickle down, is not the means
8 needed to get females to walk on. That premise is
9 basically putting the cart before the horse.

10 Many, if not merely all little girls, have
11 the interest, desire and potential talent to play
12 sports, but they never get the chance because way
13 before they reach high school they haven't had the
14 numerous school and, more importantly, community
15 opportunities that boys have had.

16 So if your parents aren't wealthy enough to
17 belong to the Country Clubs and their daughters to
18 camps and private lessons to try out for select private
19 teams and travel around the country where they can
20 receive better instruction and improve by playing
21 higher quality competition, girls just haven't
22 developed the skills nor confidence to even try out if
23 the opportunity exists at the high school level. So is
24 there any wonder why colleges can't reach
25 proportionality?

1 Finally, these schools have no motivation to
2 implement programs for compliance with Title IX. It's
3 exactly the opposite. Compliance initially will cost
4 them money to bring the facilities up to par, so
5 noncompliance is a better option. Add to that the fact
6 of impunity from any governing bodies, such as
7 withholding funds, and the schools will do nothing.

8 Maybe some type of recognition similar to a
9 blue-ribbon school criteria or adding a monetary reward
10 for schools that exceed would be better. Changing
11 Title IX is not the answer. What good is leaving any
12 child behind in achieving high academic standards if we
13 only produce young adults that have chronic diseases,
14 disabilities--

15 MR. TED LELAND: Thank you. Bill.

16 MR. BILL BRADLEY: My name is Bill
17 Bradley. I'm the other Bill Bradley.

18 I stand before you today not to speak on the
19 obvious. As a high school softball coach, I can tell
20 you the many opportunities that Title IX has brought to
21 our players in our softball program. As a high school
22 girls basketball coach, I could tell you the
23 scholarship opportunities that our players have
24 received as a result of Title IX.

25 I do not even stand before you today to

1 speak on behalf of my 7-year-old daughter who already
2 dreams of playing college basketball. No, I didn't
3 come here today to discuss these very important people
4 in my life. I came here today to discuss my son. I
5 came here today to tell you how Title IX has helped to
6 make him who he is and who he will be.

7 You see, my son has autographs of great
8 athletes in his room, both male and female. He knows
9 no difference. He enjoys watching athletes in games on
10 TV and in person, not girls or boys. My son now has
11 twice the number of positive role models in life due to
12 the changes that Title IX has brought. He, like many
13 other boys and girls in the United States, dreams of
14 playing college sports.

15 What I am thankful for is that my son has
16 grown up and will grow up respecting the abilities of
17 girls and women in sport and life. He goes outside and
18 plays ball with his best friend of the last five years.
19 They compete to their fullest abilities. Sometimes my
20 son wins, sometimes he doesn't, but when it's through,
21 he doesn't care that his best friend is a girl. He
22 sees her in no other manner than an equal. To me
23 that's what Title IX is and should remain, a chance for
24 my 10-year-old son to grow up a man seeing every woman
25 as an equal in all life's endeavors.

1 I would like to thank you for your
2 attention, and I appreciate the opportunity to be
3 heard.

4 MR. TED LELAND: Kisha.

5 MS. KISHA FORD: Thank you for having
6 me here today. Hey Coop, how are you doing?

7 Title IX is the reason why I stand before
8 you today, and not because it's the issue that we're
9 discussing, but because I attribute a lot of my success
10 to Title IX.

11 My family environment, I grew up in
12 Baltimore, Maryland, a very tough area. I was walking
13 down the street and I saw people selling drugs, at
14 night I heard gunshots, and Title IX gave me the
15 opportunity to attend college. And that was my outlet.

16 I've played basketball for as long as I can
17 remember, but by the age of 8 my family knew that we
18 needed some form of financial assistance for me to go
19 to college, for me to get out of the area, and Title IX
20 gave me that opportunity.

21 I would like to reiterate today Title IX
22 gave me an opportunity and gave many women the
23 opportunity, but it does not take away opportunities
24 for people, or for guys, it gives opportunities.

25 Basketball, like I said, was an outlet for

1 me. It became my focus. I think the biggest
2 difference and the biggest impact of my life is my big
3 brother, who taught me how to play, who was at the time
4 my role model. He was gifted athletically, as I was.
5 He obviously was a better player. But he didn't stay
6 focused. He didn't stay committed to his sport. He
7 began selling drugs by the time I was a senior in high
8 school. Since then he has been abusing drugs and has
9 been in and out of jail. I tell you that not for pity
10 and not for you to feel sorry for myself and my family,
11 it's because I know if I didn't have college, and I
12 would not have had college without Title IX, I would
13 have probably followed on the same path because that's
14 the environment I grew up in, and that's what we were
15 accustomed to.

16 Since going to college, I was able to attend
17 school here at Georgia Tech, a great opportunity, full
18 scholarship, one of the best colleges in this country.
19 That for me is one of the biggest accomplishments. And
20 my mother will still tell you today that one of her
21 proudest moments was when I was able to walk across
22 that stage.

23 Since that day I've played five years in the
24 WNBA. Unfortunately we lost in the championship game
25 against Coop with the Comets. But that's okay. But I

1 was able to play in the WNBA for five years. Again,
2 without college I would not have been able to play in
3 the WNBA because in the U.S. the players have to go to
4 college.

5 Title IX gave me that opportunity as well.
6 I graduated college in '97. Since then I completed my
7 Master's of Business Administration. I've expanded
8 myself professionally, academically, and really largely
9 in life I attribute a lot of my success to Title IX.

10 So again, I would like to say it gave me an
11 opportunity. It's going to give these young ladies up
12 here an opportunity, but let's not take it away from
13 anyone else.

14 Thank you, and I hope we all can commit to
15 finding a way that we can build all our programs and
16 not take away from anyone, wrestling or other sports.
17 Let everybody get a chance to play in college and
18 achieve their dreams. Thank you.

19 MR. TED LELAND: Claudia.

20 MS. CLAUDIA WOODY: Good afternoon. My
21 name is Claudia Woody, and I'm the Vice President of
22 IBN Learning Services. I run a global operation that's
23 more than a billion dollars annually. And I come to
24 you today to discuss how critical Title IX is in
25 providing opportunities for women and girls to acquire

1 the skills that enable them to be successful in the job
2 market.

3 I played varsity basketball in college back
4 in 1973 through '77, a long time ago, and I chose a
5 women's college back then because I was tired of being
6 a second class citizen in high school. I chose a
7 college that gave me an opportunity to play sports and
8 to learn how to be a team player. And that's been a
9 critical success factor in my road to being an
10 Executive at one of the top corporations in the world.

11 But even today women in our corporate world
12 who are my age and older don't get it. They don't
13 understand how to play a team game, and they are at an
14 incredible disadvantage. They are notoriously bad at
15 helping other women and mentoring other people, and the
16 reason for this is the paradigm we gave them back then
17 was one of a beauty pageant. There was one winner,
18 everybody else lost. It happened once a year, so it
19 seemed permanent. And it was based on things that they
20 couldn't control, like their physical beauty.

21 They never learned to share with each other.
22 They were not going to give away their beauty secrets,
23 and it was a zero sum game. That's the women in
24 corporate America who are my age and older.

25 What we gave our boys back then was a 20

1 game season. They learned to win and to lose and that
2 neither one of those things were permanent. They
3 learned to improve by their own efforts, they learned
4 to depend on other players. Even if you're Cynthia
5 Cooper, you cannot win all five no matter how good you
6 are. They learned about diversity. They learned that
7 a team of all quarterbacks will lose every time. And
8 this is what we're giving our girls today.

9 They also learned to lead, to follow, and to
10 be coachable. But at the end of the day they learned
11 that the real measure of their success was not how many
12 points they scored, but did the team win, because if
13 the team won, everybody got a gold medal.

14 So corporate America needs both boys and
15 girls who know how to play team sports. We can't
16 afford to have half of our labor pool be disadvantaged,
17 and that's part of the competitive advantage in America
18 for corporations. It's an economic issue. It's a
19 competitive issue. Change is always difficult, and
20 Title IX has certainly been a catalyst to change. And
21 that's what governments are for, dealing with difficult
22 change issues; the women's right to vote, emancipation,
23 the Civil Rights Act, integrating our schools, and
24 Title IX. Would we even ever consider not enabling
25 women and blacks to vote today? Should we consider

1 ever not giving our girls the opportunity to have the
2 same learning that our boys do and having the same
3 skills to compete in the job market? Certainly not.

4 Thank you.

5 MS. CYNTHIA COOPER: Milton Arnam,
6 Robert Johnson, Spencer Slayton, and Loren
7 Schwartzreich.

8 MR. MILTON ARNAM: Thank you for being
9 here today. I'm a parent, I'm a father, and actually
10 I'm the love of the sport, but also the love of
11 children, and my concern more so than any of this money
12 that's being thrown around and all these titles is the
13 children that are going through these trials and
14 tribulations we bring as adults in their lives, and
15 what's happening is we're taking away all their dreams
16 and their goals, and what's happening is we're saying,
17 well, this group over here makes this amount of money
18 and this group over here has to be educated.

19 We somehow need to put these two together
20 and come up with a solution than to just do away with a
21 child's dreams, knowing that their heart is for the
22 game, not for the amount of money that they are going
23 to get out of it in the end. We as adults just need to
24 come together and realize that it's up to us. I'm just
25 going to keep it short and simple.

1 Thank you.

2 MS. CYNTHIA COOPER: Thank you. Robert
3 Johnson. Robert is not here. Spencer Slayton.

4 MR. SPENCER SLAYTON: Hi, my name is
5 Spencer Slayton. Thank you very much for being here
6 and listening to us. I grew up here in Atlanta and was
7 a gymnast. I received a full scholarship to UCLA in
8 1993, and our team was dropped after my freshman year.

9 I don't have a problem at all and didn't at
10 the time with adding women's scholarships and promoting
11 equality. It's excellent. That's great. The problem
12 we had with it is that it's a little bit of reverse
13 discrimination if you have to drop men's teams in order
14 to comply with it.

15 So we filed a lawsuit against the University
16 of Los Angeles under reverse discrimination breach of
17 contract for our scholarships and lost at the time. I
18 mean, everything is very political. And I understand
19 the money aspect. The other thing we had a problem
20 with was the fact that wrestling, swimming and
21 gymnastics are the teams that are being dropped because
22 they are considered minority sports.

23 If you look back in history, that's pretty
24 much where sports started, in Greece with gymnastics,
25 with wrestling, with swimming. I went to a baseball

1 game at UCLA, there was about ten people in the stands.
2 They are not bringing in that much revenue, why not
3 drop baseball. Of course we had Jackie Robinson there,
4 the first African American to play in the Major
5 Leagues. Why not drop track, they are not producing
6 that much revenue.

7 Jackie Joyner-Kercy was there. We put three
8 guys on the Olympic team in '84 from UCLA and they
9 said, well, it has nothing to do with tradition. I
10 disagree with that.

11 I coach now here in Atlanta, and I look at
12 these young kids that have the same dreams, same goals
13 as I did growing up, and I was so fortunate to be given
14 that opportunity and basically snuck in the door before
15 this really affected us. I got to keep my scholarship
16 and everything. But I encourage you to look at this
17 worldwide. Gymnastics and wrestling are very popular
18 sports over in Europe.

19 We've got a problem here in the States with
20 paying people 280 million dollars to hit a baseball. I
21 could have played any sport I wanted to. I ran a 4.6
22 40, 40 inch vertical. Definitely could have been one
23 of seven deep in any position on a football team; of
24 course offensive lineman, no.

25 Here's where I come to the solutions. I do

1 think, and I know I'll offend people in the football
2 community, but 85 scholarships is a heck of a lot. I
3 know for a fact you can have four people deep in every
4 position, that's like 44 scholarships, and it's not
5 going to hurt football at all, it's just not. And if
6 you do have to keep dropping sports, I mean, look at
7 the sports you're dropping and the reasons you're
8 dropping them, because they are not popular, because
9 they are not revenue generated. They are not popular
10 because you can't market wrestling, you can't market
11 gymnastics. People can't get up and go do gymnastics
12 like they can get up and shoot a basketball, pretend
13 they're Michael Jordan, pick up a golf club, pretend
14 they're Tiger Woods out on the golf course.

15 So there's definitely a way to solve this
16 without taking away opportunities for men in these,
17 quote, unquote, minority sports. It really doesn't
18 make much sense. There's definitely got to be another
19 way.

20 Thank you.

21 MS. CYNTHIA COOPER: Thank you.

22 LOREN SCHWARTZREICH: Hello, my name
23 is Loren Schwartzreich. I am a current Emory
24 University law student. I went to Emory University
25 undergraduate as well, played varsity softball there.

1 First of all, I would like to say thank you
2 for all of you who are here. I'm honored to be in
3 front of you and appreciate all of your efforts.

4 And second of all, I would like to say that
5 I'm offended you're here. I'm personally offended that
6 I and all of these people behind me have -- and that
7 you are here and compelled to be here in order to
8 investigate Title IX as though there is a problem,
9 because honestly, there really is not a problem.

10 And the reason why I say this is because
11 I've done the research. I spent half of my summer
12 doing Title IX research. I researched on the
13 government's web sites checking out the schools
14 individually and most of the universities. I looked at
15 NCAA statistics, and for all of NCAA statistics that
16 they have compiled, along with it they also have the
17 teams and participation numbers from the NAIA included
18 as well, and what I found when I did the math, I saw
19 the papers, I saw the numbers, is that since '72, since
20 Title IX, the opportunities for men, believe it or not,
21 have increased. Oh, yes. And granted, they have
22 increased tremendously for women too.

23 And it's also ironic what I found at the end
24 of my research was that the opportunity for women right
25 now, if they are right here, back in '72 the

1 opportunities for men were above where women are today.

2 So although we have made a tremendous
3 increase in women's opportunities in sports, we have a
4 lot further to go. Men currently are up here, and
5 that's fantastic, we love the growth of sports, but
6 let's be realistic. The purpose of Title IX was to
7 help the underrepresented sex, that would be females,
8 in sport. We're not talking about female softball
9 players, we're not talking about female basketball
10 players, we're talking about opportunities for females.
11 And we're talking about gains or losses in men's
12 sports, we're talking about opportunities for males,
13 all males, whether it's baseball, football or
14 wrestling.

15 I didn't have a choice to play football when
16 I was in high school. That was not really an
17 opportunity for me. There were other sports that were
18 opportunities for me that they didn't have for men, but
19 football just happens to be one of those sports that
20 there aren't opportunities for women. Why on earth
21 should we not be counting that as a sport?

22 And then we consider the possibility of
23 cheerleading as a varsity sport. Now, don't get me
24 wrong, cheerleaders do work very hard, there's a lot of
25 training and a lot of time that goes into it, but if

1 it's not competitive, how are we supposed to be
2 considering that a sport? If it is used to promote
3 other teams, male or female teams, it's great, it's a
4 club, that's not a varsity sport. So if it is going to
5 be considered as a varsity sport, at least make sure
6 that it involves competition.

7 Now, I would like to go through and say that
8 during the time that Title IX was not applied to
9 athletics, there was a point where the Supreme Court
10 decided that Title IX did not apply, during that period
11 of time, those few years, that was the period when
12 there was the greatest decrease in wrestling programs
13 in the United States. That means that when Title IX
14 was not being enforced, more wrestling programs were
15 being dropped than when Title IX was being enforced.
16 So please keep that in consideration.

17 And now I would like to address some of the
18 issues that were brought up this afternoon. First of
19 all, the whole concept of proportionality has been
20 brought up several times. I would like to make it
21 clear that if you look at the law, it's not
22 specifically for proportionality, it is opportunity.
23 You're talking about opportunity. And there are three
24 ways in which universities may comply with Title IX.
25 The percent of student athletes created according to

1 interest and history of increased opportunity, there
2 are several different ways universities may comply.

3 And now I would like to also address the
4 walk-on issue. In general, yeah, there are a lot of
5 females who do not like the idea of walking on. The
6 problem with that is that we haven't created an
7 atmosphere where it's honorable for women to play
8 sports in the past, but we have been. We've been
9 creating this interest. I walked on. There was no
10 program when I started in college. I started my
11 sophomore year. My entire team walked on. We walked
12 on, and within a few years we were going to the
13 National Championship.

14 This is your interest right here. Those
15 girls who are sitting right here, those are your
16 interest. That's the future that you are talking
17 about, Creating that interest: If you create it, girls
18 will come. And I would also like to point out that it
19 was mentioned by Coach Teaff that his opportunity was
20 important. I'm telling you that my opportunity is just
21 as important as his is.

22 Thank you.

23 MS. CYNTHIA COOPER: Thank you.

24 MR. TED LELAND: The next four are
25 Randy Hartley, Jason Quinty, J.D. Humphreys, and Selma

1 Malanie. We have in addition to these four just two
2 other speakers signed up, so I think we'll be able to
3 complete our task on time here.

4 So Randy, would you begin, please.

5 MR. RANDY HARTLEY: Good afternoon and
6 thanks for your time. I'm going to sound a little bit
7 like a broken record here because I too went to UCLA.

8 My name is Randy Hartley, and I was a
9 swimmer at UCLA in the last two years of the program.
10 To give you a little bit of background, I grew up in
11 California. I'm a California boy by tradition, born
12 and raised there, and basically always dreamt of going
13 to a big-time university in California and competing at
14 a college level. And I actually put in a lot of time
15 and effort to get there, as did my parents.

16 To make a long story short, all those plans
17 and desires led me right to UCLA. And I attended on a
18 full athletic scholarship my freshman year, and
19 somewhere between my freshman and sophomore year I got
20 a call from a teammate that said that we no longer have
21 a team at UCLA. And obviously I questioned it and
22 found out that it was due to Title IX and because we
23 were not a revenue sport.

24 I'm basically just here to give you a real
25 life example of what does happen and how people are

1 being affected by Title IX from a man's point of view.

2 We were dropped along with the gymnastics
3 team. And I would agree with the gentleman just before
4 me that tradition should play some part in this. We
5 were a top ten team for 28 straight years at UCLA and
6 we were dropped. No offense to your program at
7 Stanford, they were very good, was one of our top
8 rivals. I enjoyed competing against them. I enjoyed
9 competing in the top conference in the nation, but that
10 right was taken away from me after my sophomore year.

11 I was fortunate in that I got to transfer to
12 Auburn University and, thus, I'm now in the south,
13 albeit on a reduced scholarship. I did transfer to
14 Auburn and never felt right about even taking a
15 scholarship at Auburn simply because I felt like I was
16 taking somebody else's scholarship. There was one less
17 opportunity out there, actually I should say 9.9 less
18 opportunities out there when UCLA dropped their swim
19 team.

20 So my point is this: In growing up in a
21 minority sport there really are two goals. One is to
22 compete for your nation at the Olympic level. Many men
23 don't really have that opportunity until they get into
24 their college years. Swimming is a prime example.
25 There are a few exceptions to the rule, as with any

1 sport, but most of the Olympians come from the college
2 level.

3 The second goal was to obtain a college
4 athletic scholarship and swim at a very good
5 university. Now, I have to say that there were some
6 trying times from the time that I started swimming at
7 the age of 4 and the age of 18 when I actually got to
8 college, and along the way if one of those two
9 opportunities were not available to me, it's very
10 likely I would have gone and played football,
11 basketball, or baseball, some other sport.

12 So my point basically is this: that if we
13 start taking it away at the college level, I really
14 feel like we're hurting the age group level as well.
15 So if the opportunities are not there, it's not going
16 to be there at a younger level as well.

17 I don't want my message to be misunderstood
18 here. I'm very much in favor of women's sports and
19 promoting women's sports and not detracting any
20 dollars. I agree 100 percent with the people before
21 me. However, the way that Title IX is being
22 implemented by college universities today is not
23 appropriate and there needs to be something done.

24 Unfortunately, I don't have the solution;
25 however, I just don't feel that opportunities should be

1 taken away from men to provide equal opportunities for
2 women.

3 Thanks for your time.

4 MR. TED LELAND: Jason.

5 MR. JASON QUINLY: Thank you to the
6 Board. And I guess since I'm a wrestler, can I get six
7 minutes? Isn't that the usual? No, I'm just kidding.

8 My name is Jason Quinly. I'm a University
9 of Georgia wrestler on our club team, and as well, I'm
10 a community coach with football and wrestling. Also, a
11 little bit more of my background, I'm also a former
12 University of Georgia football player.

13 Now, why do I tell you all this? I feel
14 like I have diversified experience in several sports
15 and the way they work out.

16 Now, I'm here to represent wrestling, I'm
17 not here to represent football. I know football has
18 been kind of the bad guy and, you know, I can see that.
19 I played on the University of Georgia football team.
20 Did we need 85 scholarships? There were guys on the
21 team who were in the locker room -- this is locker room
22 information, guys, that I'm sharing with you because
23 it's important -- they'd say yeah, I'm sticking around
24 here so I can eat a scholarship. We called it eating a
25 scholarship. They're here just so they can hang around

1 the school for four years.

2 There are a lot of guys like that. And I'm
3 not saying these guys -- you know, I love my teammates,
4 but I don't know if that's necessarily right if there
5 should be the opportunity for people to eat the
6 scholarships when there are, you know, tons of people
7 who are out there just walking on just for the love of
8 it.

9 On that note of doing it for the love of it,
10 that's why I wrestle. You know, I could have gone and
11 played football anywhere, but I never could have made
12 too many D-1 wrestling programs at all. Why? Because
13 there are substantially less. There are 140 spots just
14 on Georgia's football team and only 80 something get
15 scholarships, but there are 140 spots, and that's a lot
16 of opportunity.

17 Now, why keep wrestling? Like some people
18 have talked about before, it's the oldest sport.
19 There's always been a contest between people to decide
20 who is stronger or whatever. And wrestling tests
21 people in all areas. I tell my kids, and this is
22 something everyone here needs to hear, there are two
23 parts of your body you cannot live without, it's your
24 brain and your heart.

25 So when we think about Title IX, when we

1 think about the laws, we need to use not just our
2 brain, but we need to use our heart and let our hearts
3 go out to young athletes, young men and women whose
4 dreams are -- the seed is planted and then it's just
5 nipped away as soon as they get to college. And I hate
6 to see that happen. And wrestling has provided a lot
7 of my kids with that heart, with that smart. It's been
8 useful.

9 And we're concerned about terrorism. We
10 need to know how to defend ourselves as Americans, and
11 wrestling is the only sport that teaches you how to do
12 that. More so, it gives people direction. And talking
13 with the Secretaries of schools, they have told me
14 that, you know, these kids are behaving so much better
15 now that they've joined the wrestling team. I was a
16 football coach and wrestling coach. I don't think I
17 did a better job coaching wrestling, I think it's the
18 sport itself that's giving these young men and women
19 direction, because I coach young women in wrestling.
20 There's nothing that says that young women can't
21 wrestle. I've had a lot of approach from UC
22 Bakersfield to everywhere have tried to get women's
23 programs going on, and why? Because this is something
24 anyone can do.

25 In America we value equality from the

1 starting point, but we value also disparity at the
2 finish; in other words, we want people to start out on
3 equal grounds in all measures, and that's what Title IX
4 is trying to get to, but it's nipping them off where
5 people who are putting in the work should be getting
6 more rewards. That's the American ideal we started
7 from the beginning, all right. So, you know, why cut
8 it off up top?

9 I also tell my wrestlers little decisions
10 have big impacts. The gender equity thing, it cannot
11 be solved at a college level, I'm sorry, I've been
12 there, it can't be, but it can be solved in changing
13 our culture from the ground up, if we start to change
14 our culture from the ground starting young and letting
15 young people know that no matter who you are, no matter
16 where you're from, there's an opportunity for you,
17 okay.

18 And we talked about opportunities that have
19 been intended for equality, but they have been misused
20 by policy to be turned into partiality. We can undue
21 Title IX by policy as it was misbrought by policy.
22 That's going to take us voting for the right people,
23 that's going to take us doing the right things from the
24 bottom level.

25 So guys, you all give the sport your heart

1 and give it your smart. Just use some logic and
2 compassion. And I thank you guys for letting me talk
3 here.

4 Thank you.

5 MR. TED LELAND: J.D.

6 MR. J.D. HUMPHREYS: My name is J.D.
7 Humphreys, and something is wrong. I am a parent of a
8 Division 1 wrestler who's in the northeast because we
9 don't have that down south truly. I'm also very proud
10 to be the father of a D-3 women's LaCrosse player who
11 started her freshman year coming out of Georgia and
12 playing LaCrosse.

13 I am a Vice President of U.S. LaCrosse's
14 Georgia Chapter, a big LaCrosse buff. I think the
15 young ladies who were before you briefly will have the
16 opportunity to play LaCrosse at Loganville High School
17 this coming year. And our work primarily in developing
18 high school and youth LaCrosse in Georgia and our focus
19 on girls' and women's sports, I'm all for it, all
20 women's sports. What's wrong with this is that
21 football, and I played a year of college football, is a
22 statistical operation.

23 If you look at every other sport but
24 football, there's a good argument that it's a minority
25 sport. I think it is a fact that hasn't been

1 articulated that we don't have any women's football
2 teams. I have not heard from anybody at ground swell.
3 You'll see an occasional player. There's a lawsuit at
4 Duke and I think at Penn State there's a kicker that
5 sued this year, but there's no grounds for the
6 opportunity seeking young girls in the football realm.

7 It is a statistical aberration. And as the
8 gentleman just prior to me spoke, there are 80 to 140
9 male athletes competing in football. I challenge you
10 to tell me what women's sport or what other men's sport
11 has 80 to 140 participants. It is a statistical
12 aberration. And the law ought to be changed to take
13 football out of the equation, and then I think Title IX
14 as it is written is quite workable.

15 Now, there is a fact. I have known and I
16 have worked with -- like I said, I'm at the high school
17 and youth level, but I know the men's LaCrosse coaches
18 at the club level at Virginia Tech and at Georgia Tech,
19 ACC, SEC. Will there ever be any Division 1 men's
20 LaCrosse teams in the south? The answer to that is no.
21 The reason is Title IX.

22 We do have club teams, thank you, and we're
23 going to do quite well with those, but when you really
24 look at what's going on, Title IX has had an effect on
25 men's teams that is unintended by the people who

1 promulgated this law.

2 I've also been involved with wrestling for a
3 long period of time, and you've heard enough about
4 that. I'm a big supporter of that sport, and women do
5 participate in it, but wrestling teams have evaporated.
6 Title IX is a good reason for that.

7 I think all of our children need to have the
8 opportunity to participate. There's not a bad sport
9 out there. The more sports, the better. Whatever it
10 may be, let's do it, but let's give our kids the
11 opportunity to do it. But with the statistical
12 aberration that we have as a matter of fact, it was not
13 contemplated when Title IX was enacted.

14 If you have 80 to 144 slots occupied by
15 football players, you just don't have any sport to
16 compensate it on the feminine side. And so that's
17 what's wrong with the Act, and that needs to be
18 addressed.

19 I thank you for your attention and the
20 opportunity to speak.

21 MR. TED LELAND: Sonja.

22 MS. SONJA MALLORY: Good afternoon. My
23 name is Sonja Mallory, and I play for Georgia Tech. I
24 would like to take this opportunity to speak on behalf
25 of my team and to share my experience at Tech.

1 We are very blessed at Georgia Tech. When I
2 was recruited, I was promised one thing, an
3 opportunity. My coach and the administration at
4 Georgia Tech worked very hard to ensure that it is an
5 equal one. There's a good feeling knowing that we are
6 always taken care of from the hotels we frequent, to
7 the meals we eat, to the resources that are available
8 to us, including a nutritionist, vision training,
9 sports psychiatry, et cetera.

10 When I hear stories from friends I played
11 with in high school about the resources available to
12 them, I listen in disbelief and thank God for the
13 opportunity we have at Georgia Tech. The sky is the
14 limit for me, but it hasn't always been.

15 I am from the Bronx, New York and was
16 thrilled at the idea of leaving the city. I vowed that
17 I would never let an opportunity go to waste, and I
18 don't believe I have.

19 Once arriving at Tech, I decided I would
20 major in chemical engineering; after all, I go to an
21 engineering school, one of the best, or the best, in
22 the country. It has been challenging balancing class
23 work, practice, and games, but I am now in my fourth
24 year and on track to graduate in five years, the fifth
25 being paid for by Georgia Tech. And yes, it takes five

1 years at Tech for everybody, so I'm not behind or
2 anything.

3 Basketball brought me to Georgia Tech
4 financially. Now, not only am I going to have a degree
5 in chemical engineering, but also an opportunity to
6 play my sport at the next level. I guess you can say
7 we're spoiled at Georgia Tech; you see, I can't imagine
8 not flying to every game or having to eat McDonald's
9 after a two-hour long game. I cannot talk to you about
10 all the cases where Title IX has been accused of
11 hindering some athletes, I can only give you a glimpse
12 of my life these last three years.

13 I have had the pleasure of seeing young
14 women athletes graduate from Georgia Tech and go on to
15 become industrial engineers, mechanical engineers, and
16 consultants. I had one teammate who recently furthered
17 her basketball overseas, in Puerto Rico. It's very
18 nice. These women have served as an inspiration to me
19 as I hope I do for other females; however, none of this
20 would have been possible without Title IX.

21 Thank you.

22 MR. TED LELAND: We have three more
23 speakers, Brenda Kirkpatrick, Michelle Joseph, and
24 Billette Owens-Ashford. We'll also have Pete Fritts.

25 Brenda, if you could start, please.

1 MS. BRENDA KIRKPATRICK: Hello and good
2 afternoon. My name is Brenda Kirkpatrick. I am
3 currently an assistant coach of women's basketball at
4 Georgia Tech University, and I'm here as a proponent of
5 Title IX.

6 Just first off, like many others, I will
7 tell you how Title IX has played such a large role in
8 my life. I'm a graduate of Wake Forest University. I
9 played there four years. I graduated in 2000. I also
10 received my Master's Degree from Wake Forest University
11 while I was playing, and I was able to do that because
12 I had a medical redshirt my freshman year, so that
13 allowed me four years of playing eligibility.

14 I stayed on track to graduate, and out of
15 that I got a Master's Degree, all paid for, all full
16 scholarship. I was a double major. So I had my
17 undergraduate degree and my Master's all paid for. And
18 that was due to Title IX. That was due to my
19 scholarship at Wake Forest.

20 Also, Title IX has played a role in my
21 family. My sister, she was a scholarship player at
22 Western Carolina University. She's also now the head
23 volleyball coach there. So I know if she could be here
24 today, she would speak as well as a proponent for Title
25 IX and how that's played a role in her life.

1 My mother was a great basketball player.
2 Unfortunately she's 58 years old and 30 or 40 years ago
3 we didn't have Title IX. But I know she would have
4 been able to play in college with a scholarship because
5 I got my jump shot from her, and I'm pretty good.

6 I want to ask a couple of questions here,
7 and I just want to say first where would we be in
8 athletics right now without Title IX? Where would we
9 be? Just really think about that as a panel when
10 you're making your discussions. Would we have
11 equality? Would we have the fairness that we have
12 today? We still have a long ways to go with that, but
13 where would we be in athletics if Title IX had not been
14 enacted 30 years ago?

15 Someone said earlier that athletic programs
16 are doing things for women. Why are they doing things
17 for women in sports now? I think that's because of
18 Title IX. I would like to stand here and say that
19 we're doing things and the athletic departments are
20 doing and funding women's sports out of the goodness,
21 out of trying to be fair and equal, but I really think
22 they are doing that because they have to because of
23 Title IX, because of the legislation, and therefore if
24 that legislation were not in place, I just don't
25 believe that women would have the same opportunities

1 that they do today because of Title IX.

2 The other thing is someone said earlier that
3 Title IX has done its job, that it's run its course,
4 and we don't need it anymore. Well, how do we decide
5 when a law or piece of legislation has run its course?
6 Again, do we really believe that if Title IX was not
7 effective, would we have equality in -- would we still
8 make efforts to keep equality in sports to stay fair,
9 to stay right? And then what are the consequences
10 again? I mean, I'm being a little repetitive, but what
11 are the consequences if we do eliminate Title IX?

12 I truly believe that there will be women who
13 will suffer, there will be athletes who will suffer.

14 My last thing is, and you hate to say this
15 sometimes, but what is the greater good? I can't stand
16 here and say that, you know, I hate that people have
17 the heart, they have the desire and they don't have the
18 opportunity to play. I feel bad about that, I do, but
19 what is the greater good? What is the solution to this
20 problem? And I honestly believe if Title IX is cut, I
21 believe that a large group of people will suffer, a
22 very, very large group of people will suffer. And I do
23 believe that we can work with the fact that the
24 interpretation of Title IX, that we might have a
25 problem there, and also with people using Title IX as a

1 scapegoat for other things, for other decisions that
2 are being made in the athletic departments at certain
3 universities.

4 I think Title IX is being used in the wrong
5 way. I think it might be interpreted in some cases in
6 the wrong manner, but the solution here is we cannot
7 tamper with Title IX. We cannot take Title IX, we
8 cannot do away with that piece of legislation. We
9 cannot. We just cannot do that.

10 So I thank you for your time, and I just
11 really believe Title IX is fair, it is right, it is
12 equal, and we must have it. We must have it. Thank
13 you.

14 MS. MICHELLE JOSEPH: Hello, my name is
15 Michelle Joseph. I played college basketball at Perdue
16 University and I've coached college women's basketball
17 for ten years now. I'm currently the Assistant Coach
18 at Georgia Tech here in Atlanta, and I'm here today
19 because Title IX has changed my life.

20 It has not only allowed me to earn an
21 education, but it has also allowed me to earn a living
22 doing what I love. I have six brothers and sisters,
23 and without Title IX I would not have been allowed to
24 go to college.

25 Title IX gave me an opportunity to receive

1 an education. Because of Title IX, I was given all the
2 resources I needed to excel in my sport. Because of
3 Title IX, I am given the opportunity to do what I love,
4 to coach college basketball. I'm able to give back so
5 much that was given to me.

6 I don't think any woman or girl would want
7 her brother, uncle, cousin, nephew or friend to be
8 denied an opportunity to participate in sports. We are
9 only asking for the same amount of opportunities to
10 participate. We are only asking for the opportunity to
11 receive the same amount of quality coaching and the
12 same resources that are provided to male athletes.

13 My hope is that we will find a way to
14 provide opportunities for both male and female athletes
15 to participate in sports without changing Title IX.

16 I love watching football. My four brothers
17 played football and I five nephews currently playing
18 football, but it seems to me that if you take five of
19 the 85 football scholarships and give them to wrestling
20 or gymnastics, they could have a program.

21 As a result, male athletes would still be
22 given the opportunity to participate in the sport they
23 choose and women will still be given similar
24 opportunities.

25 Thank you for your time.

1 MS. BILLETTE OWENS-ASHFORD: Good
2 afternoon. My name is Billette Owens-Ashford, and I'm
3 the Athletic Director for Atlanta Public Schools.
4 Atlanta Public Schools is not the largest school in the
5 State of Georgia. We have about 60,000 students and
6 the majority of our students are African American,
7 Hispanic, and other minority populations make up about
8 95 percent of our school district.

9 When we typically hear about Title IX, we
10 hear about the impact of it at the college level.
11 However, I would like to speak to the interscholastic
12 piece of Title IX as it pertains to athletics. I would
13 like to make a plea that as we review the legislation,
14 that we look at ways in which both girls and boys can
15 benefit from the legislation.

16 What I have found as I have taken the
17 position of Athletic Director in Atlanta Public Schools
18 I am the first female Athletic Director, by the way, is
19 that Title IX afforded me the opportunity not as some
20 of the folks who have spoken here earlier said that
21 they have been athletes and had an opportunity to get a
22 scholarship. However, I was in high school at the time
23 that Title IX came about, and I remember the ruckus and
24 I remember our coaches making strides to make sure that
25 we had programs that were sufficient for girls and that

1 worked justice to us.

2 I knew that when I left school, that I would
3 have the opportunity to come back and be an
4 Administrator in the area of athletics. That's
5 something I've always dreamed to do. And Title IX
6 afforded me that opportunity. And I also think that it
7 put the mindset in place for our Board to be able to
8 select an Athletic Director not based on sex, but based
9 on the job that was to be done, to put the best person
10 in place. And I'm sure that Title IX helped in that
11 thinking.

12 The point that I would like to make is that
13 what I've noticed, and one of the funny things that has
14 happened as I took the job, most of the guys were
15 saying, we're in trouble now, we've got a female
16 Athletic Director. What I've noticed as I worked in
17 the urban system is that athletics is important to all
18 of our students. We don't have just the issue of girls
19 participating, sometimes we have an issue with young
20 boys participating also. And we need to make sure that
21 all of our children are able to obtain the lessons that
22 sports brings to them so they would have the
23 opportunity if they chose to to go to college, and we
24 hope most of them will, and all of them for that
25 matter, that they could either choose from an academic

1 scholarship or an athletic scholarship.

2 I am the mother of three daughters, so I
3 understand how important it is, and I would like for
4 them to have those same opportunities. I am a soccer
5 mom, a competitive cheer mom. Yes, it can be
6 competitive for the person who spoke earlier. I am
7 also a track mom, and I want to see my girls be as
8 successful as all children who are in public school or
9 private school for that matter at the interscholastic
10 level because of the benefit that it brings to our
11 young people.

12 And the last thing I would like to add to
13 this, as we look at this whole athletic piece, the
14 whole idea that women have an opportunity to
15 participate and have a love of physical activity and
16 then enjoy healthy lifestyle once their college or high
17 school days are over is that as we look at this, if you
18 would take notice at what is happening in our physical
19 education programs and our schools.

20 When we start talking about the marketing of
21 programs and getting kids involved and enjoying the
22 love of physical activity, that as we take these
23 opportunities away from the classroom to understand why
24 physical fitness is important, that this also impacts
25 upon the growth of Title IX and the ability of women as

1 well as young men to participate in the sport. And
2 again, I'm speaking on behalf of Atlanta Public Schools
3 and those students that we serve in urban settings,
4 that physical activity is most important, that they
5 enjoy a love of good health and wellness, and that as
6 they want to create other opportunities to demonstrate
7 their talents, that athletics be an equal playing field
8 for all of them because of what it brings to each and
9 every one of their lives.

10 Thank you.

11 MR. TED LELAND: Pete.

12 MR. PETE FRITTS: My name is Pete
13 Fritts. I am the State Representative for the National
14 High School Coaches Association for the sport of
15 wrestling in the State of Georgia. In addition to
16 that, I spent 20 years as a career military officer,
17 retiring in 1980. I spent 20 years as a high school
18 faculty member and coach of boys' varsity wrestling,
19 boys' varsity baseball, and girls' varsity softball.

20 I'm the father of a son who wrestled at the
21 secondary and collegiate level and a daughter who is a
22 softball player and a competitive cheerleader. I also
23 am coach of Jan Hutchison, which many of the women will
24 know in this auditorium, who was the most successful
25 Division 1 coach. She surpassed Bear Bryant, which was

1 illustrated in Sports Illustrated about a year ago, the
2 sports of softball and field hockey. That doesn't make
3 me an expert.

4 Some lawyers have said, if you're not an
5 expert, don't tell them you're an expert. If you want
6 to talk about how to meet a girl on the beach in Ft.
7 Lauderdale during college week 40 years ago and stay
8 married for 40 years, I'm an expert, okay. If you want
9 to know the best Rhythm and Blues band to hear in the
10 Caribbean, I'm an expert.

11 As far as Title IX, I don't see Title IX up
12 there. I see the Secretary's Commission on the
13 Opportunity in Athletics probably more fitting you
14 would say to equal opportunity in athletics.

15 It was brought up yesterday by Mr. Rodrigues
16 and several other people, male and female, three times,
17 is anyone in the auditorium opposed to Title IX? No
18 one stood up and said yes. I heard the word hostility
19 used yesterday. I turned to the lady next to me and I
20 said, do you sense any hostility, and she said, only
21 mild.

22 Then she stood up and gave a very passionate
23 speech on Title IX. And I respect her right to do so,
24 but everybody here -- now I understand that wrestling
25 and gymnastics, which is dominated -- and the tears, as

1 we mentioned, and the whole bit. I wrestled in
2 college. I wrestled at Bucknell. Bucknell recently
3 dropped the program. My teammate offered five million
4 dollars to reinstate the program. I got a letter from
5 Bill Graham, who a building is named after in
6 Philadelphia, about three weeks ago. He gave the five
7 million to Bucknell. Four million eight hundred and
8 eighty thousand dollars went to female athletics,
9 120,000 went to reestablish the wrestling program with
10 the hopes of some day getting back the status of
11 Division 1 or 2.

12 I don't know the details. I do know that
13 the money went for female athletics. And I'm all for
14 that. I have a daughter, as I said, participating. I
15 think it was all brought out here that we're not
16 opposed. We do want the opportunity for the minor
17 sports, whether it be gymnastics or wrestling, which
18 I'm supposed to represent. But I've listened to all
19 the discussions the last two days and I've been
20 impressed. I feel honored to be in front of a panel
21 with people like Donna de Verona, Cynthia Cooper and
22 Deborah Yow and all the rest of you. I'm glad that
23 President Bush and the Secretary of Education has
24 convened this Commission. I only hope that your report
25 and your study will still not be debated like the

1 Warren Commission report was something like 40 years
2 ago, okay, that we rubber stamp it, so to speak. The
3 issue is opportunity like you had.

4 Title IX, it's fine, it's great. I'm not an
5 expert. I told you what I'm an expert on, and that's
6 not one of them, okay. But the implementation,
7 Athletics Directors, college Presidents, what drives
8 big college athletics? Money, and among my sport,
9 okay. So the college Presidents and Athletic Directors
10 are also somewhat hand strung, okay. They have got to
11 be able to do it.

12 But the minor sports seem to suffer, whether
13 they be male or female. I feel very strongly about
14 wrestling because it's been my whole life. I know the
15 gymnastics people and whatever, and have something like
16 a baseball team at Arizona State, which was highly
17 rated, or the swimming program at Stanford. If your
18 committee can find out why isn't Title IX being
19 implemented correctly, who are the ones that are
20 violating it, and what can we do to correct it, you've
21 accomplished your mission.

22 Thank you very much.

23 MR. TED LELAND: Pretty good summary.
24 I think we may have left our challenge until the end.
25 I want to thank everybody for coming. If you want to

1 submit written materials to us, you can do that to any
2 of the Commissioners, myself, Cynthia, or to the
3 Department of Education in care of Debbie Price. Let
4 us know what you're thinking. And for the
5 Commissioners, we'll see you again in Chicago.

6 Thank you.

7 (Hearing adjourned, 1:00 p.m.)

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